

**High Court of Judicature at Allahabad**

**Sitting at Lucknow**

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**AFR**  
**RESERVED**

**1 Case :- PUBLIC INTEREST LITIGATION (PIL) No. 878 of 2022**

**Petitioner :-** Vaibhav Pandey

**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Urban Development, Civil Sectr. Lko. And Another

**Counsel for Petitioner :-** Sharad Pathak, Piyush Pathak

**Counsel for Respondent :-** C.S.C., Anurag Kumar Singh

**CONNECTED WITH**

**2. Case :- WRIT - C No. - 8904 of 2022**

**Petitioner :-** Tushar Malviya

**Respondent :-** State Of U.P. Thru. Prin. Secy. Nagar Vikas Civil Sectr. U.P. Lko. And Others

**Counsel for Petitioner :-** Amrendra Singh

**Counsel for Respondent :-** C.S.C., Rohit Tripathi

**3. Case :- WRIT - C No. - 8928 of 2022**

**Petitioner :-** Adarsh Kumar

**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Of Urban Development Govt. Of U.P. Lko. And Another

**Counsel for Petitioner :-** Sharad Pathak, Ashutosh Bajpai, Piyush Pathak

**Counsel for Respondent :-** C.S.C., Anurag Kumar Singh

**4. Case :- WRIT - C No. - 8937 of 2022**

**Petitioner :-** Harikesh Kumar Gautam

**Respondent :-** State Of U.P. Thru. Prin. Secy. Nagar Vikas Vibhag Govt. U.P. Lko. And Others

**Counsel for Petitioner :-** Vijay Shankar Singh

**Counsel for Respondent :-** C.S.C., Atul Kumar Dubey

5. **Case :-** WRIT - C No. - 8945 of 2022  
**Petitioner :-** Manoj Kumar Pandey And Others  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Development Deptt. Lko. And Others  
**Counsel for Petitioner :-** Rajeiu Kumar Tripathi  
**Counsel for Respondent :-** C.S.C.,Anurag Kumar Singh
6. **Case :-** WRIT - C No. - 8957 of 2022  
**Petitioner :-** Vijay Kumar And Another  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Nagar Vikas U.P. Shashan Lko. And Others  
**Counsel for Petitioner :-** Rama Kant Dixit  
**Counsel for Respondent :-** C.S.C.,Rohit Tripathi
7. **Case :-** WRIT - C No. - 8958 of 2022  
**Petitioner :-** Pramod Kumar Maurya  
**Respondent :-** State Of U.P. Thru. Prin. / Addl. Chief Secy. Deptt. Urban Development Govt. U.P. Lko. And Others  
**Counsel for Petitioner :-** Kshemendra Shukla  
**Counsel for Respondent :-** C.S.C.,Atul Kumar Dubey
8. **Case :-** WRIT - C No. - 8961 of 2022  
**Petitioner :-** Raj Bahadur Pandey And Others  
**Respondent :-** State Of U.P. Thru. Prin. / Addl. Chief Secy. Deptt. Of Nagar Vikas Govt. Of U.P. Lko. And Others  
**Counsel for Petitioner :-** Shobhit Mohan Shukla  
**Counsel for Respondent :-** C.S.C.,Rohit Tripathi
9. **Case :-** WRIT - C No. - 8969 of 2022  
**Petitioner :-** Ajay Kumar Dwivedi  
**Respondent :-** State Of U.P. Thru. Addl. Secy./Prin.Secy. Deptt.Of Urban Development Civil Sectr. Lko And Other  
**Counsel for Petitioner :-** Anand Mani Tripathi,Atul Benjamin Solomon  
**Counsel for Respondent :-** C.S.C.,Namit Sharma,Shailendra Singh Chauhan,Shantanu Gupta
10. **Case :-** WRIT - C No. - 8975 of 2022  
**Petitioner :-** Vishal Agarwal  
**Respondent :-** State Of U.P. Thru. Prin. / Addl. Chief Secy. Deptt. Of Nagar Vikas Govt. U.P. Lko. And Others

**Counsel for Petitioner :-** Ganesh Nath Mishra,Ashutosh Shahi

**Counsel for Respondent :-** C.S.C.,Rohit Tripathi,Satish Chandra Kashish

11. **Case :-** WRIT - C No. - 8981 of 2022  
**Petitioner :-** Ram Awadh  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Nagar Vikas Vibhag, U.P. Lko. And Others  
**Counsel for Petitioner :-** Chandra Prakash,Ashok Kumar  
**Counsel for Respondent :-** C.S.C.,Atul Kumar Dubey
12. **Case :-** WRIT - C No. - 8985 of 2022  
**Petitioner :-** Narayan Maheshwari  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Development Civil Sectr. Lko. And Others  
**Counsel for Petitioner :-** Akhilesh Kumar Kalra,Lakshmi Kant Tripathi  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary
13. **Case :-** WRIT - C No. - 8987 of 2022  
**Petitioner :-** Mayank Bajpai  
**Respondent :-** State Of U.P. Thru. Addl./ Prin Secy. Deptt. Of Urban Development Civil Secy. Lko. And Others  
**Counsel for Petitioner :-** Alok Singh Chauhan  
**Counsel for Respondent :-** C.S.C.
14. **Case :-** WRIT - C No. - 9001 of 2022  
**Petitioner :-** Suresh Kumar  
**Respondent :-** State Of U.P. Thru. Secy. Urban Development Deptt. U.P Civil Sectr. Lko. And Others  
**Counsel for Petitioner :-** Rahul Srivastava,Jai Prakash Yadav  
**Counsel for Respondent :-** C.S.C.,Akash Sinha,Atul Kumar Dubey
15. **Case :-** WRIT - C No. - 9002 of 2022  
**Petitioner :-** Sudhir Kumar Singh  
**Respondent :-** State Of U.P. Thru. Addl./Prin. Secy. Deptt. Of Urban Development Civil Sectr. Lko. And Others

**Counsel for Petitioner :-** Hari Shanker Tewari  
**Counsel for Respondent :-** C.S.C.

16. **Case :-** WRIT - C No. - 9009 of 2022  
**Petitioner :-** Meru Kant Pandey  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Development Deptt. Civil Sectr. Lko. And Others  
**Counsel for Petitioner :-** Sharad Nandan Ojha, Akhand Pratap Singh, Eshan Garg, Somdutta Singh  
**Counsel for Respondent :-** C.S.C., Rakesh Kumar Chaudhary
17. **Case :-** WRIT - C No. - 9014 of 2022  
**Petitioner :-** Abhinay Tripathi  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Nagar Vikas Civil Sectr. Govt. U.P. Lko. And Others  
**Counsel for Petitioner :-** Ranjana Srivastava, Bal Keshwar Srivastava, Shraddha Tripathi  
**Counsel for Respondent :-** C.S.C.
18. **Case :-** WRIT - C No. - 9016 of 2022  
**Petitioner :-** Smt. Anjali Agarwal And Another  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Nagar Vikas , Civil Sectr. Govt. U.P. Lko. And Another  
**Counsel for Petitioner :-** Dharendra Kumar Mishra  
**Counsel for Respondent :-** C.S.C.
19. **Case :-** WRIT - C No. - 9017 of 2022  
**Petitioner :-** Mahendra Kumar Rajpoot And Another  
**Respondent :-** State Of U.P. Thru. Addl. Chief / Prin. Secy. Deptt. Urban Development Civil Sectr. Lko. And Anr  
**Counsel for Petitioner :-** Anand Mani Tripathi  
**Counsel for Respondent :-** C.S.C.
20. **Case :-** WRIT - C No. - 9018 of 2022  
**Petitioner :-** Ravi Kumar And Another  
**Respondent :-** State Of U.P. Thru. Addl. Secy./ Prin. Secy. Deptt. Urban Development Civil Sectr. Lko. And Others  
**Counsel for Petitioner :-** Anand Mani Tripathi  
**Counsel for Respondent :-** C.S.C.

- 21. Case :-** WRIT - C No. - 9026 of 2022  
**Petitioner :-** Ghanshyam Sharma And Others  
**Respondent :-** State Of U.P. Thru. Addl. Secy./Prin. Secy. Deptt. Urban Development Civil Sectt. Lko. And Others  
**Counsel for Petitioner :-** Anand Mani Tripathi  
**Counsel for Respondent :-** C.S.C.
- 22. Case :-** WRIT - C No. - 9037 of 2022  
**Petitioner :-** Mata Prasad  
**Respondent :-** State Of U.P. Thru. Addl. Secy./ Prin. Secy. Deptt. Urban Development, Civil Sectt. Lko. And Others  
**Counsel for Petitioner :-** Hari Shanker Tewari  
**Counsel for Respondent :-** C.S.C.
- 23. Case :-** WRIT - C No. - 9044 of 2022  
**Petitioner :-** Dinesh Chandra Tiwari And Others  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Development Deptt. Civil Sectt. Lko. And Others  
**Counsel for Petitioner :-** Rajeev Narayan Pandey,Niteesh Kumar  
**Counsel for Respondent :-** C.S.C.,Atul Kumar Dubey,Dharmendra Gupta
- 24. Case :-** WRIT - C No. - 9046 of 2022  
**Petitioner :-** Sanan Afandi  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Urban Development, Govt. U.P. Civil Sectt. Lko. And Another  
**Counsel for Petitioner :-** J.B. Singh  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary
- 25. Case :-** WRIT - C No. - 9053 of 2022  
**Petitioner :-** Ramesh Chandra  
**Respondent :-** State Of U.P. Thru. Prin. Secy. U.P. Govt. Urban Development , Civil Sectt. U.P. Lko. And Others  
**Counsel for Petitioner :-** R.K.S. Chauhan  
**Counsel for Respondent :-** C.S.C.
- 26. Case :-** WRIT - C No. - 9056 of 2022  
**Petitioner :-** Siddhesh Kumar  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Of

Urban Development Civil Sectr. Lko. And Another  
**Counsel for Petitioner :-** Jagdambika Prasad  
Tripathi,Jagdish Prasad Maurya,Sandeep Kumar  
**Counsel for Respondent :-** C.S.C.

27. **Case :-** WRIT - C No. - 9068 of 2022  
**Petitioner :-** Mahendra Kumar Valmiki  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban  
Development Deptt. Civil Sectt. Lko. And Others  
**Counsel for Petitioner :-** Dr. Ravi Kumar Mishra  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar  
Chaudhary
28. **Case :-** WRIT - C No. - 9072 of 2022  
**Petitioner :-** Pinki Kinnar  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Sthaniya Nikay  
Civil Secrett. Lko. And Others  
**Counsel for Petitioner :-** Shraddha Tripathi,Akash  
Mishra,Dhirendra Kumar Mishra,Pawan Kumar  
Upadhyay,Rakesh Devi Prasad Kumar,Ranjana  
Srivastava,Smt. Pramila D. Misra,Sushil Kumar Pathak  
**Counsel for Respondent :-** C.S.C.,Anurag Kumar Singh
29. **Case :-** WRIT - C No. - 9075 of 2022  
**Petitioner :-** Smt. Sushila  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Urban  
Development, Govt. U.P. Civil Sectt. Lko. And Another  
**Counsel for Petitioner :-** Prashant Kumar Singh  
**Counsel for Respondent :-** C.S.C.,Aakash Singh
30. **Case :-** WRIT - C No. - 9079 of 2022  
**Petitioner :-** Pratima Dixit And Anr  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Deve.  
Civil Sectr. Lko. And Others  
**Counsel for Petitioner :-** Ashutosh Srivastava  
**Counsel for Respondent :-** C.S.C.,Ram Kumar Singh
31. **Case :-** WRIT - C No. - 9092 of 2022  
**Petitioner :-** Triloki Prasad Sonkar And Anr  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Deve.  
Deptt. Civil Sectr. Lko. And Others

**Counsel for Petitioner :-** Devesh Chandra Pathak  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary

32. **Case :-** WRIT - C No. - 9171 of 2022  
**Petitioner :-** Irshad Ahmad  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Of Urban Development Govt. U.P. Lko. And Anr  
**Counsel for Petitioner :-** Mohammad Asmar Ansari,Gibran Akhtar Khan,Mohd. Jafar Alam  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary
33. **Case :-** WRIT - C No. - 9175 of 2022  
**Petitioner :-** Vinod Kumar Shukla  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Deve. U.P.Civil Sectr. Lko. And Others  
**Counsel for Petitioner :-** Harish Chandra Yadav  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary,Ram Kumar Singh
34. **Case :-** WRIT - C No. - 9187 of 2022  
**Petitioner :-** Ashish Kumar Shukla  
**Respondent :-** State Of U.P. Thru. Prin. Secy./Addl. Chief Secy. Deptt. Of Nagar Vikas Govt. U.P. Lko. And Others  
**Counsel for Petitioner :-** Anand Dubey  
**Counsel for Respondent :-** C.S.C.,Anurag Kumar Singh
35. **Case :-** WRIT - C No. - 9188 of 2022  
**Petitioner :-** Mewalal  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Development Deptt. U.P. Lko. And Others  
**Counsel for Petitioner :-** Anil Kumar Nishad,Jagroopan Nishad,Ramesh Kumar  
**Counsel for Respondent :-** C.S.C.,Aakash Singh
36. **Case :-** WRIT - C No. - 9191 of 2022  
**Petitioner :-** Sudhir Kumar Singh And Another  
**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Nagar Vikas Govt. Of U.P. Civil Sectr. Lko. And Ors  
**Counsel for Petitioner :-** Raj Kumar Singh

**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary

37. **Case :-** WRIT - C No. - 9194 of 2022  
**Petitioner :-** Manish Kumar Rathore  
**Respondent :-** State Of U.P Thru. Prin./Addl.Chief Secy.Deptt.Nagar Vikas Govt. Of U.P. Civil Sectr. Lko.And Ors  
**Counsel for Petitioner :-** Anand Dubey  
**Counsel for Respondent :-** C.S.C.,Anurag Kumar Singh
38. **Case :-** WRIT - C No. - 9234 of 2022  
**Petitioner :-** Dheeraj Shukla  
**Respondent :-** State Of U.P Thru. Prin. Secy. Urban Development Deptt. And 5 Others  
**Counsel for Petitioner :-** O.P. Tiwari  
**Counsel for Respondent :-** C.S.C.,Anurag Kumar Singh
39. **Case :-** WRIT - C No. - 9261 of 2022  
**Petitioner :-** Rakesh Kumar Maurya And Others  
**Respondent :-** State Of U.P. Thru. Secy. Deptt. Of Urban Deve. Civil Sectr. Lko. And Others  
**Counsel for Petitioner :-** Mohd. Ateeq Khan  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary
40. **Case :-** WRIT - C No. - 9277 of 2022  
**Petitioner :-** Nalini Agrahari  
**Respondent :-** State Of U.P Thru. Prin./ Addl. Chief Secy. Deptt. Of Nagar Vikas Govt. U.P. Lko. And Others  
**Counsel for Petitioner :-** Akash Deep Dubey,Anupam Shukla  
**Counsel for Respondent :-** C.S.C.,Rohit Tripathi
41. **Case :-** WRIT - C No. - 9286 of 2022  
**Petitioner :-** Ashutosh Shukla  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Nagar Vikas Anubhag-I Govt. Of U.P. Lko. And Others  
**Counsel for Petitioner :-** Virendra Kumar Dubey  
**Counsel for Respondent :-** C.S.C.,Anurag Kumar Singh



42. **Case :-** WRIT - C No. - 9289 of 2022  
**Petitioner :-** Akbal Bahadur Tiwari  
**Respondent :-** State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Deptt. Nagar Vikas U.P. Civil Sectr. Lko. And Anr  
**Counsel for Petitioner :-** Anand Mani Tripathi  
**Counsel for Respondent :-** C.S.C.
43. **Case :-** WRIT - C No. - 9291 of 2022  
**Petitioner :-** Dharendra Kumar Tiwari  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Deve. Govt. U.P. Civil Sectr. Lko. And Another  
**Counsel for Petitioner :-** Sharad Pathak  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary
44. **Case :-** WRIT - C No. - 9292 of 2022  
**Petitioner :-** Lalit Mohan  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Of Urban Development Govt. Of U.P. Lko. And Another  
**Counsel for Petitioner :-** Sharad Pathak  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary
45. **Case :-** WRIT - C No. - 9302 of 2022  
**Petitioner :-** Anil Kumar  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Deve. Deptt. Civil Sectr. Lko. And Others  
**Counsel for Petitioner :-** O.P. Tiwari  
**Counsel for Respondent :-** C.S.C.,Anurag Kumar Singh
46. **Case :-** WRIT - C No. - 9306 of 2022  
**Petitioner :-** Anand Kumar  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Development Deptt. Civil Sectr. Lko. And Others  
**Counsel for Petitioner :-** Abhinav Singh,Shashank Singh,Vinod Kumar  
**Counsel for Respondent :-** C.S.C.,Anurag Kumar Singh,Hemant Kumar Mishra
47. **Case :-** WRIT - C No. - 9308 of 2022  
**Petitioner :-** Saroj Saran Singh

**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Development Deptt., Civil Sectr. Lko. And Others  
**Counsel for Petitioner :-** Abhinav Singh, Shashank Singh  
**Counsel for Respondent :-** C.S.C., Rakesh Kumar Chaudhary

48. **Case :-** WRIT - C No. - 9316 of 2022  
**Petitioner :-** Mohammad Irfan  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Development, Govt. U.P. Civil Sectt. Lko. And Others  
**Counsel for Petitioner :-** Dev Mani Mishra, Virendra Mishra  
**Counsel for Respondent :-** C.S.C., Atul Kumar Dubey
49. **Case :-** WRIT - C No. - 9321 of 2022  
**Petitioner :-** Bobby Sharma  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Development Deptt. Civil Sectr. Lko. And Others  
**Counsel for Petitioner :-** Sharad Nandan Ojha, Akhand Pratap Singh, Eshan Garg, Somdutta Singh  
**Counsel for Respondent :-** C.S.C., Rakesh Kumar Chaudhary
50. **Case :-** WRIT - C No. - 9322 of 2022  
**Petitioner :-** Jai Shanker Tewari  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Urban Development Civil Sectt. U.P. Lko. And Others  
**Counsel for Petitioner :-** Manish Misra, Gaurav Upadhyay  
**Counsel for Respondent :-** C.S.C., Rohit Tripathi
51. **Case :-** WRIT - C No. - 9323 of 2022  
**Petitioner :-** Deepak Narayan  
**Respondent :-** State Of U.P. Thru. Prin./Addl. Chief Secy. Deptt. Of Urban Development Govt. U.P. Lko. And Others  
**Counsel for Petitioner :-** Anuj Kumar Garg, Ram Mohan Mishra  
**Counsel for Respondent :-** C.S.C., Anurag Kumar Singh
52. **Case :-** WRIT - C No. - 9324 of 2022  
**Petitioner :-** Vikash Agarwal  
**Respondent :-** State Of U.P. Thru. Its Addl. Chief/Prin. Secy. Urban Development U.P. Civil Sectr. Lko. And Others

**Counsel for Petitioner :-** Tushar Mittal,Gaurav Mehrotra  
**Counsel for Respondent :-** C.S.C.,Anurag Kumar  
Singh,Pankaj Gupta

53. **Case :-** WRIT - C No. - 9325 of 2022  
**Petitioner :-** Yogesh Gupta  
**Respondent :-** State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Urban Development And Others  
**Counsel for Petitioner :-** Gaurav Mehrotra,Tushar Mittal  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary
54. **Case :-** WRIT - C No. - 9332 of 2022  
**Petitioner :-** Abhay Singh  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Development Deptt. Civil Secrett. Lko. And Others  
**Counsel for Petitioner :-** Rajeev Narayan Pandey,Niteesh Kumar  
**Counsel for Respondent :-** C.S.C.,Anurag Kumar Singh
55. **Case :-** WRIT - C No. - 9335 of 2022  
**Petitioner :-** Iqbal Ahmad And Another  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Urban Development, Civil Sectr. Lko. And Others  
**Counsel for Petitioner :-** Mohd. Ateeq Khan  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary
56. **Case :-** WRIT - C No. - 9352 of 2022  
**Petitioner :-** Lalit Mohan Srivastava  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Nagar Vikas, Civil Sectr. Govt. U.P. Lko. And Another  
**Counsel for Petitioner :-** Ranjana Srivastava,Anurag Shukla  
**Counsel for Respondent :-** C.S.C.
57. **Case :-** WRIT - C No. - 9356 of 2022  
**Petitioner :-** Pyare Miya  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Development Civil Secrett. Lko. And Others  
**Counsel for Petitioner :-** Neeraj Kumar Mishra,Rajesh Kumar Shukla

**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary

- 58. Case :-** WRIT - C No. - 9365 of 2022  
**Petitioner :-** Ram Ji Saxena  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Of Urban Development U.P. Civil Sectr. Lko. And Another  
**Counsel for Petitioner :-** Anurag Shukla,Preeti Shukla (Tiwari)  
**Counsel for Respondent :-** C.S.C.,Aakash Singh
- 59. Case :-** WRIT - C No. - 9367 of 2022  
**Petitioner :-** Hayat Mohammad  
**Respondent :-** State Of U.P. Thru. Its Addl. Chief Secy. Nagar Vikas Govt. Civil Sectr. Lko. And Others  
**Counsel for Petitioner :-** Satya Prakash Mishra,Babu Ram Shukla,Sarfraz Ahmad  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary
- 60. Case :-** WRIT - C No. - 9371 of 2022  
**Petitioner :-** Rahisuddin  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Deve. U.P. Civil Sectr. Lko. And Another  
**Counsel for Petitioner :-** Sharad Pathak,Piyush Pathak  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary
- 61. Case :-** WRIT - C No. - 9372 of 2022  
**Petitioner :-** Ashish Kumar And Another  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Development Govt. Of U.P. Civil Sectr. Lko. And Another  
**Counsel for Petitioner :-** Raj Kumar Upadhyaya (R.K.Upadhyaya),Kanchan Kumar Pandey  
**Counsel for Respondent :-** C.S.C.,Anurag Kumar Singh
- 62. Case :-** WRIT - C No. - 9375 of 2022  
**Petitioner :-** Ankur Verma  
**Respondent :-** State Of U.P. Thru. Prin./Addl. Chief Secy. Deptt. Urban Development, Govt. U.P. Lko. And Others  
**Counsel for Petitioner :-** Kuldeep Kumar

Srivastava,Prashant Kumar Srivastava  
**Counsel for Respondent :- C.S.C.**

- 63. Case :-** WRIT - C No. - 9380 of 2022  
**Petitioner :-** Sunil Kumar Dwivedi And Another  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Of Urban Development Govt. Of U.P. Civil Sectr. Lko. And Anr  
**Counsel for Petitioner :-** Kalika Prasad Pandey  
**Counsel for Respondent :-** C.S.C.,Rohit Tripathi
- 64. Case :-** WRIT - C No. - 9393 of 2022  
**Petitioner :-** Pawan Kumar  
**Respondent :-** State Of U.P. Thru. Its Prin. Secy. Nagar Vikas Anubhag-I Govt. Of U.P. Lko. And Others  
**Counsel for Petitioner :-** Subhash Chandra Ojha,Udai Bhanu Singh  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary
- 65. Case :-** WRIT - C No. - 9394 of 2022  
**Petitioner :-** Amarnath Shukla  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Of Urban Development Lko. And Another  
**Counsel for Petitioner :-** Virendra Singh  
**Counsel for Respondent :-** C.S.C.
- 66. Case :-** WRIT - C No. - 9408 of 2022  
**Petitioner :-** Mohammad Rais  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Of Urban Development Lko. And Others  
**Counsel for Petitioner :-** Nitin Kumar Mishra,Lavlesh Kumar  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary
- 67. Case :-** WRIT - C No. - 9418 of 2022  
**Petitioner :-** Madan Pal  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Urban Development, Lko. And Another  
**Counsel for Petitioner :-** Sharad Pathak,Piyush Pathak  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar

Chaudhary

68. **Case :-** WRIT - C No. - 9421 of 2022  
**Petitioner :-** Ashish Kumar Rawat  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Of Urban Development Govt. Of U.P. Lko. And Others  
**Counsel for Petitioner :-** Brijesh Kumar Kuldeep  
**Counsel for Respondent :-** C.S.C., Namit Sharma, Rakesh Kumar Chaudhary, Shailendra Singh Chauhan
69. **Case :-** WRIT - C No. - 9426 of 2022  
**Petitioner :-** Virendra Vikram Singh  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Urban Development, Lko. And Another  
**Counsel for Petitioner :-** Ravi Kumar Verma  
**Counsel for Respondent :-** C.S.C., Rohit Tripathi
70. **Case :-** WRIT - C No. - 9456 of 2022  
**Petitioner :-** Rakesh Kumar Sonker  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Development ) Civil Secrett. Lko. And Another  
**Counsel for Petitioner :-** Rachit Gupta, Sushil Yadav  
**Counsel for Respondent :-** C.S.C., Rakesh Kumar Chaudhary
71. **Case :-** WRIT - C No. - 9472 of 2022  
**Petitioner :-** Suman Maurya  
**Respondent :-** State Of U.P. Thru. Prin. Secy. / Addl. Chief Secy. Deptt. Of Nagar Vikas Lko. And Another  
**Counsel for Petitioner :-** Manuvendra Singh, Sachin Pratap Singh  
**Counsel for Respondent :-** C.S.C.
72. **Case :-** WRIT - C No. - 9476 of 2022  
**Petitioner :-** Rakesh Kumar Sonkar  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Nagar Vikas, Lko. And Another  
**Counsel for Petitioner :-** Ranjana Srivastava, Anurag Shukla, Smt. Pramila D. Misra  
**Counsel for Respondent :-** C.S.C.

73. **Case :-** WRIT - C No. - 9487 of 2022  
**Petitioner :-** Raju Kashayap  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Dept. Nagar Vikas Home Deptt. U.P. Civil Sectt. Lko. And 3 Others  
**Counsel for Petitioner :-** Ravindra Kumar Singh, Sudhir Kumar Dhangar  
**Counsel for Respondent :-** C.S.C., Namit Sharma, Rakesh Kumar Chaudhary
74. **Case :-** WRIT - C No. - 9510 of 2022  
**Petitioner :-** Vachaspati Mishra  
**Respondent :-** State Of U.P. Thru. Addl. Prin. Secy. Urban Development Civil Secrett. Lko. And 2 Others  
**Counsel for Petitioner :-** Om Prakash Mishra  
**Counsel for Respondent :-** C.S.C., Rakesh Kumar Chaudhary
75. **Case :-** WRIT - C No. - 9513 of 2022  
**Petitioner :-** Anil Nishad  
**Respondent :-** State Of U.P. Thru. Prin. Secy. /Addl. Secy. Dept. Urban Development Lko. And 4 Others  
**Counsel for Petitioner :-** Pankaj Kumar Tiwari, Sarvesh Kumar Misra  
**Counsel for Respondent :-** C.S.C., Namit Sharma
76. **Case :-** WRIT - C No. - 9515 of 2022  
**Petitioner :-** Vijay Kumar Mishra  
**Respondent :-** State Of U.P. Thru. Addl. Secy./Prin. Secy. Deptt. Urban Development Lko. And 4 Others  
**Counsel for Petitioner :-** Pankaj Kumar Tiwari  
**Counsel for Respondent :-** C.S.C., Namit Sharma
77. **Case :-** WRIT - C No. - 9524 of 2022  
**Petitioner :-** Lalit Kumar  
**Respondent :-** State Of U.P. Thru. Addl. Prin. Secy. Urban Development Lko. And 2 Others  
**Counsel for Petitioner :-** Om Prakash Mishra  
**Counsel for Respondent :-** C.S.C., Rakesh Kumar Chaudhary

- 78. Case :-** WRIT - C No. - 9624 of 2022  
**Petitioner :-** Yishwar Prakash  
**Respondent :-** State Of U.P. Thru. Its Prin. Secy. Nagar Vikas Anubhag-1 Bapu Bhawan Lko. And 4 Others  
**Counsel for Petitioner :-** Arvind Kumar,Gayatri Abhyasi,Pankaj Kumar Sahu  
**Counsel for Respondent :-** C.S.C.,Anurag Kumar Singh,Banwari Lal Maurya
- 79. Case :-** WRIT - C No. - 9652 of 2022  
**Petitioner :-** Dev Narayan And Another  
**Respondent :-** State Of U.P. Thru. Prin./Addl. Chief Secy. Deptt. Urban Dev. U.P. Lko. And 3 Others  
**Counsel for Petitioner :-** Jaikaran  
**Counsel for Respondent :-** C.S.C.,Rohit Tripathi
- 80. Case :-** PUBLIC INTEREST LITIGATION (PIL) No. - 880 of 2022  
**Petitioner :-** Surya Kant Yadav  
**Respondent :-** State Of U.P. Thru. Its Prin. Secy. Deptt. Of Niagar Vikas Civil Sect. Lko. And Others  
**Counsel for Petitioner :-** Raghvendra Pratap Singh,Kirti Veer Singh,Pankaj Prasoon,Ravi Shanker Singh  
**Counsel for Respondent :-** C.S.C.,Namit Sharma,Shailendra Singh Chauhan
- 81. Case :-** PUBLIC INTEREST LITIGATION (PIL) No. - 907 of 2022  
**Petitioner :-** Rajnish Awasthi  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Development U.P. Civil Sect. Lko. And Others  
**Counsel for Petitioner :-** Prabhu Ranjan Tripathi  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary
- 82. Case :-** PUBLIC INTEREST LITIGATION (PIL) No. - 914 of 2022  
**Petitioner :-** Satish Yadav  
**Respondent :-** State Of U.P. Thru. Its Prin. Secy. Deptt. Of Nagar Vikas Secr. U.P. Lko.And 4 Others  
**Counsel for Petitioner :-** Raghvendra Pratap Singh,Arvind



Kumar,Pankaj Prasoon

**Counsel for Respondent :-** C.S.C.,Namit Sharma,Shailendra Singh Chauhan

**83. Case :-** PUBLIC INTEREST LITIGATION (PIL) No. - 920 of 2022

**Petitioner :-** Ajay Kumar Yadav

**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Of Nagar Vikas Civil Sectr. Lko. And Others

**Counsel for Petitioner :-** Akram Azad

**Counsel for Respondent :-** C.S.C.,Namit Sharma,Shailendra Singh Chauhan

**84. Case :-** PUBLIC INTEREST LITIGATION (PIL) No. - 922 of 2022

**Petitioner :-** Israr Ahmad Khan

**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Development U.P. Civil Sectr. Lko. And Others

**Counsel for Petitioner :-** Ausaf Ahmad Khan

**Counsel for Respondent :-** C.S.C.

**85. Case :-** PUBLIC INTEREST LITIGATION (PIL) No. - 925 of 2022

**Petitioner :-** Sumit Kushwaha

**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Development Deptt., Lko. And Others

**Counsel for Petitioner :-** Abhishek Singh,Akhand Kumar Pandey,Rajeev Kr. Chauhan,Sachida Nand Singh

**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary

**86. Case :-** PUBLIC INTEREST LITIGATION (PIL) No. - 931 of 2022

**Petitioner :-** Ashutosh Verma

**Respondent :-** State Of U.P. Thru. The Prin. Secy. Urban Development Deptt. Civil Sectr. Lko. And Others

**Counsel for Petitioner :-** Abhishek Singh,Dharmendra Kumar Singh,Sachida Nand Singh

**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary

- 87. Case :-** PUBLIC INTEREST LITIGATION (PIL) No. - 936 of 2022  
**Petitioner :-** Mohd. Afroz  
**Respondent :-** State Of U.P. Thru. Prin.Secy. Addl. Chief Secy. Deptt. Of Nagar Vikas And 3 Others  
**Counsel for Petitioner :-** Azad Khan  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary
- 88. Case :-** PUBLIC INTEREST LITIGATION (PIL) No. - 939 of 2022  
**Petitioner :-** Shivakant Yadav  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Urban Development, Lko. And Another  
**Counsel for Petitioner :-** Prabhu Ranjan Tripathi, Ankush Pandey  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary
- 89. Case :-** PUBLIC INTEREST LITIGATION (PIL) No. - 940 of 2022  
**Petitioner :-** Abhay Pratap Singh  
**Respondent :-** State Of U.P. Thru. Prin./ Addl. Chief Secy. Deptt. Of Nagar Vikas Lko. And 2 Others  
**Counsel for Petitioner :-** Amrendra Nath Tripathi  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary
- 90. Case :-** PUBLIC INTEREST LITIGATION (PIL) No. - 943 of 2022  
**Petitioner :-** Amit Chopra  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Of Urban Development Lko. And 2 Others  
**Counsel for Petitioner :-** Vivek Kumar Singh  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary
- 91. Case :-** PUBLIC INTEREST LITIGATION (PIL) No. - 946 of 2022  
**Petitioner :-** Sandeep Kumar Pandey  
**Respondent :-** State Of U.P. Thru. The Prin. Secy. Deptt. Of

Urban Development Govt. Lko And 2 Others  
**Counsel for Petitioner :-** Pranav Pandey  
**Counsel for Respondent :-** C.S.C.,Anurag Kumar Singh

**92. Case :-** PUBLIC INTEREST LITIGATION (PIL) No. - 950 of 2022

**Petitioner :-** Sarwan Ram Darapuri  
**Respondent :-** State Of U.P. Thru. Its Prin. Secy. Deptt. Of Urban Development Lko. And Others  
**Counsel for Petitioner :-** Kamlesh Kumar Singh,Nitin Kumar Mishra  
**Counsel for Respondent :-** C.S.C.,Rakesh Kumar Chaudhary

**93. Case :-** PUBLIC INTEREST LITIGATION (PIL) No. - 959 of 2022

**Petitioner :-** Lal Bhadur Alias Ram Ji  
**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Of Urban Deve. Govt. Of U.P. Civil Sectr. Lko. And Anr  
**Counsel for Petitioner :-** Rajendra Prasad Lodhi  
**Counsel for Respondent :-** C.S.C.

**Hon'ble Devendra Kumar Upadhyaya, J.**  
**Hon'ble Saurabh Lavania, J.**

**(Per D.K. Upadhyaya, J)**

## **1. Prologue**

**1.1** It is inclusion not exclusion, equality not inequality and democracy not executive fiat that runs as a common thread throughout our Constitution. In a society as diverse as ours it has been the endeavour of our Constitutional Courts to further strengthen this thread.

With this percept in mind, we proceed to consider the issues posed before us in this batch of petitions which raise similar

questions of fact and law and hence are being decided by this common judgment which follows:

**1.2** Some of these petitions have been filed as Public Interest Litigation and some of them raise the alleged personal grievance arising out of a notification dated 05.12.2022 issued by the State Government in the Department of Urban Development which is a draft order in terms of section 9-A (5)(3) of Uttar Pradesh Municipalities Act, 1916 (hereinafter referred to as 'Municipalities Act') inviting objections to the proposed determination of number of offices of the Chairpersons of different Municipal Bodies to be reserved for the Scheduled Castes, the Scheduled Tribes, Backward Classes and Women. Challenge, however, is confined to the proposed determination for providing reservation to the Backward Class of citizens in respect of seats and offices of Chairpersons of these bodies.

**1.3** Challenge has also been made to the Government Order dated 12.12.2022 whereby it has been provided that on expiry of the term of various local bodies, the District Magistrates of the respective districts shall authorize operation of bank accounts of such local bodies under the joint signatures of the Executive Officer and the Senior most officer of Uttar Pradesh Nagar Palika Centralized Services (Accounts Cadre). As per the said Government Order, current term of the local bodies is coming to an end on different dates falling between 12.12.2022 and January 31, 2023.

**1.4** In one of the petitions, a prayer has been made to direct the State Government to include transgenders in the Backward Class of citizens and to provide them reservation within the reservation

which may be available to backward class of citizens in the matter of election to the urban local bodies. The said prayer has been made in the light of the judgment of Hon'ble Supreme Court in the case of **National Legal Services Authority vs. Union of India and others**, rendered on 15.04.2014 in Writ Petition (Civil) No.400 of 2012.

**1.5** Preliminary objection as to the maintainability of the writ petitions raised by the State on the ground that the impugned notification dated 05.12.2022 is only a draft order and hence the petitioners will have opportunity to raise their objections before the authority concerned, as such, the petitions are premature, has already been repelled by us vide our order dated 12.12.2022 and for the reasons given therein we have already held the petitions to be maintainable.

## **2. Facts**

**2.1** The Parliament by enacting the Constitution (Seventy-fourth) Amendment Act 1992 inserted Part IXA in the Constitution of India w.e.f. 01.06.1993 with the object of incorporating the provisions relating to urban local bodies in the Constitution for empowering such bodies so that these bodies are able to perform effectively as vibrant democratic units of self-government. The Statement of Objects and Reasons for the 74th Constitutional Amendment is as follows:

### **"STATEMENT OF OBJECTS AND REASONS**

*1. In many States local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersession and inadequate devolution of powers and functions. As a result,*

*Urban Local Bodies are not able to perform effectively as vibrant democratic units of self-government.*

*2. Having regard to these inadequacies, it is considered necessary that provisions relating to Urban Local Bodies are incorporated in the Constitution particularly for-*

*(i) putting on a firmer footing the relationship between the State Government and the Urban Local Bodies with respect to-*

*(a) the functions and taxation powers; and*

*(b) arrangements for revenue sharing;*

*(ii) Ensuring regular conduct of elections;*

*(iii) ensuring timely elections in the case of supersession; and*

*(iv) providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women.*

*3. Accordingly, it is proposed to add a new part relating to the Urban Local Bodies in the Constitution to provide for-*

*(a) constitution of three types of Municipalities:*

*(i) Nagar Panchayats for areas in transition from a rural area to urban area;*

*(ii) Municipal Councils for smaller urban areas;*

*(iii) Municipal Corporations for larger urban areas. The broad criteria for specifying the said areas is being provided in the proposed article 243-0;*

*(b) composition of Municipalities, which will be decided by the Legislature of a State, having the following features:*

*(i) persons to be chosen by direct election;*

*(ii) representation of Chairpersons of Committees, if any, at ward or other levels in the Municipalities;*

*(iii) representation of persons having special knowledge or experience of Municipal Administration in Municipalities (without voting rights);*

*(c) election of Chairpersons of a Municipality in the manner specified in the State law;*

*(d) constitution of Committees at ward level or other level or levels within the territorial area of a Municipality as may be provided in the State law;*

*(e) reservation of seats in every Municipality-*

*(i) for Scheduled Castes and Scheduled Tribes in proportion to their population of which not be less than one-third shall be for women;*

*(ii) for women which shall not be less than one-third of the total number of seats;*

*(iii) in favour of backward class of citizens if so provided by the Legislature of the State;*

*(iv) for Scheduled Castes, Scheduled Tribes and women in the office of Chairpersons as may be specified in the State law;*

*(f) fixed tenure of 5 years for the Municipality and re-election within six months of end of tenure. If a Municipality is dissolved before expiration of its duration, elections to be held within a period of six months of its dissolution;*

*(g) devolution by the State Legislature of powers and responsibilities upon the Municipalities with respect to preparation of plans for economic development and social justice, and for the implementation of development schemes as may be required to enable them to function as institutions of self-government;*

*(h) levy of taxes and duties by Municipalities, assigning of such taxes and duties to Municipalities by State Governments and for making grants-in-aid by the State to the Municipalities as may be provided in the State law;*

*(i) a Finance Commission to review the finances of the Municipalities and to recommend principles for-*

*(1) determining the taxes which may be assigned to the Municipalities;*

*(2) Sharing of taxes between the State and Municipalities*

*(3) grants-in-aid to the Municipalities from the Consolidated Fund of the State;*

*(j) audit of accounts of the Municipal Corporations by the Comptroller and Auditor-General of India and laying of reports before the Legislature of the State and the Municipal Corporation concerned;*

*(k) making of law by a State Legislature with respect to elections to the Municipalities to be conducted under the superintendence, direction and control of the chief electoral officer of the State;*

*(l) application of the provisions of the Bill to any Union territory or part thereof with such modifications as may be specified by the President;*

*(m) exempting Scheduled areas referred to in clause (1), and tribal areas referred to in clause (2), of article 244, from the application of the provisions of the Bill. Extension of provisions of the Bill to such areas may be done by Parliament by law;*

*(n) disqualifications for membership of a Municipality*

*(o) bar of jurisdiction of Courts in matters relating to elections to the Municipalities.*

2.2 Article 243-T inserted in the Constitution vide 74th Amendment provides that in every Municipality seats shall be reserved for the Scheduled Castes and the Scheduled Tribes and number of seats to be reserved for these category of citizens shall bear the same proportion to the total number of seats to be filled by direct election, as nearly as may be, as the population of these classes in the Municipal area bears to the total population of that area. This provision also states that allotment of such seats may be done by rotation of different constituencies in a Municipality. Sub clause 2 of Article 243-T makes a provision for reserving not less than one-third of the total number of seats for women belonging to the Scheduled Castes or the Scheduled Tribes. Sub clause 3 provides that not less than one-third of the total number of seats to be filled in in every Municipality shall be reserved for women and allotment thereof shall be made by rotation, including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes. Apart from making a provision for reservation against the seats in the manner provided in Article 243-T (1)(2) & (3), sub clause (4) provides that the offices of Chairpersons shall also be reserved for the the Scheduled Castes,



the Scheduled Tribes and women in such manner as may be provided by the Legislature of a State.

**2.3** Thus, so far as the reservation of seats in a Municipality for the Scheduled Castes, the Scheduled Tribes and women is concerned, it is constitutionally mandated, however, so far as reservation to "backward class of citizens" is concerned, sub clause (6) of Article 243-T only contains an enabling provision according to which the Legislature of a State can make a provision for reservation of seats in a Municipality or offices of Chairpersons, in their favour.

**2.4** Since various provisions contained in Part IX-A of the Constitution of India required corresponding changes to be made by the State Legislatures in the respective municipal laws, by enacting U.P. Act no.12 of 1994, the Municipalities Act in the State of Uttar Pradesh was exhaustively amended. Similarly, by the same amending Act, namely, U.P. Act No. 12 of 1994, Uttar Pradesh Municipal Corporations Act, 1959 was also exhaustively amended.

**2.5** For giving effect to Article 243-T of the Constitution of India, section 9-A and section 7 were inserted in the Municipalities Act, 1916 and the Municipal Corporations Act, 1959 respectively. These provisions provide for reservation of seats and for offices of Chairpersons in the Municipalities and in the Municipal Corporations.

**2.6** We may note that almost simultaneous with insertion of Part IX-A in the Constitution of India, Part IX which is in relation to Panchayats, which are local self-government bodies working in the

rural areas was inserted by enacting the Constitution (Seventy-third) Amendment Act, 1992 which came into force w.e.f. 24.04.1993. As it was the purpose of Part IX to strengthen the rural local self-government bodies, provisions almost akin to the provisions contained in Article 243-T which falls in Part IX-A was inserted in Part IX as well in the form of Article 243-D which also provides constitutionally mandated reservation in seats and offices of the Chairpersons of the Panchayats to the members belonging to the Scheduled Castes and Scheduled Tribes and also to women. Clause (6) of Article 243-D enables the Legislature of a State to make provisions for reservations of seats or offices of Chairpersons in Panchayats in favour of backward class of citizens. Thus the provisions relating to reservation of the Scheduled Castes, the Scheduled Tribes, women and backward class of citizens as available in the Constitution for Rural Local Bodies are almost in *pari materia* with such provisions available in the Constitution for Urban Local Bodies.

**2.7** Constitutional validity of some aspects of reservation policy prescribed in the Constitution in respect of local self-government institutions, both for rural and urban areas, became subject matter of challenge before Hon'ble Supreme Court in the case of **K. Krishna Murthy and others vs. Union of India and another**, reported in **(2010) 7 SCC 202**. The provisions in the Constitution which enable reservation in favour of Backward Classes in the seats and also in the offices of Chairpersons of these bodies was also challenged which was considered by the Constitution Bench of Hon'ble Supreme Court and nothing foul was found with Articles

243-D and 243-T of the Constitution of India. We may also hasten to add that in the case of **K. Krishna Murthy (supra)** the provisions providing reservation in the seats and in the office of Chairpersons of Panchayats available in Uttar Pradesh Panchayat Raj Act and Uttar Pradesh (Kshetra Panchayats and Zila Panchayats) Adhiniyam, 1961, which are akin to section 9-A and section 7 of Municipalities Act and Municipal Corporations Act were also under challenge, however, the Constitution Bench of Hon'ble Supreme Court did not examine the said challenge for the reasons stated in the judgments itself.

**2.8** The Constitution Bench of Hon'ble Supreme Court in the case of **K. Krishna Murthy (supra)** arrived at five conclusions and *inter alia* held that nature and purpose of reservation in relation to local bodies is considerably different from that in relation to higher education and public employment and that Article 243-D and Article 243-T form a distinct and independent Constitutional basis for affirmative action and further that the principles evolved in relation to reservation enabled by Articles 15(4) and 16(4) cannot be applied in the context of local bodies. Hon'ble Supreme Court also found itself not in a position to examine the issue relating to over breadth of quantum of reservation provided for backward classes of citizens under the State of Legislations (which included the Legislations relating to Panchayats in the State of Uttar Pradesh as well) for the reason that there was no contemporaneous empirical data available. In this fact situation, the Constitution Bench also observed that onus is on the Executive to conduct a rigorous investigation into the patterns of backwardness that act as

barriers to political participation which, in the opinion of the Constitution Bench of Hon'ble Supreme Court, are quite different from patterns of disadvantages in the matter of access to education and employment.

**2.9** The Constitution Bench of Hon'ble Supreme Court in the case of **K. Krishna Murthy (supra)** expressed a view that identification of "Backward Classes" under Article 243-D(6) and Article 243-T(6) has to be distinct from identification of "socially and educationally backward Classes" for the purposes of Article 15(4) and that of "Backward Classes" for the purposes of Article 16(4).

**2.10** After the judgment by the Constitution Bench of Hon'ble Supreme Court in the case of **K. Krishna Murthy (supra)** the matter relating to reservation of backward classes of citizens in terms of Article 243-T again engaged attention of Hon'ble Supreme Court in a case which emanated from State of Maharashtra, namely, **Vikas Kishanrao Gawali vs. State of Maharashtra and others**, decided on 04.03.2021, reported in **(2021) 6 SCC 73**. In this judgment Hon'ble Supreme Court clearly expressed its opinion that reservation for backward classes of citizens is only statutory in nature to be provided by the State Legislatures unlike the constitutional reservation regarding Scheduled Castes and Scheduled Tribes which is linked to the proportion of population. The apex Court in the case of **Vikas Kishanrao Gawali (supra)** also observed that State-authorities are under obligation to fulfill certain pre-conditions before reserving seats for Backward Class of citizens in the local bodies and outlined that foremost requirement is to collate adequate materials and documents that would help in

identification of backward classes for the purposes of reservation by conducting a contemporaneous rigorous empirical enquiry into the nature and implications of backwardness through an independent dedicated Commission.

**2.11** Keeping in view the law laid down by the Constitution Bench in the case of **K. Krishna Murthy (supra)** in **Vikas Kishanrao Gawali (supra)** the Apex Court enunciated that triple test/conditions are required to be complied with by the State before reserving the seats in local bodies for Backward Class of citizens. This triple test/conditions as outlined by Hon'ble Supreme Court in the case of **Vikas Kishanrao Gawali (supra)** are:

*(A) to set up a dedicated Commission to conduct contemporaneous rigorous empirical enquiry into the nature and implications of backwardness qua local bodies, within the State,*

*(B) to specify the proportion of reservation required to be provisioned local body-wise in the light of the recommendations of the Commission so as not to face foul of over breadth, and*

*(C) in any case such reservation shall not exceed aggregate of 50% of total seats reserved in favour of the Scheduled Castes/Scheduled Tribes/Backward Classes of citizens taken together.*

**2.12** These petitions have, thus, been filed with the primary allegation that the State Government by issuing the impugned notification dated 05.12.2022 is acting not only against the constitutional mandate contained in Article 243-T but is also not following the principles as mandated by Hon'ble Supreme Court in the aforesaid two judgments in the case of **K. Krishna Murthy (supra)** and **Vikas Kishanrao Gawali (supra)**.

### 3. Relevant Constitutional Provisions

3.1 In the course of arguments various constitutional provisions have been referred to by the learned counsel representing the respective parties and we will also be taking into account such provisions in our discussion in this judgment. The relevant constitutional provisions are:

**(i) Article 243-D. Reservation of seats.**-(1) *Seats shall be reserved for-*

*(a) the Scheduled Castes; and*

*(b) the Scheduled Tribes,*

*in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.*

*(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.*

*(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.*

*(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:*

*Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the*

*Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:*

*Provided further that not less than one-third of the total number of offices of Chairpersons in the 97 Panchayats at each level shall be reserved for women:*

*Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.*

*(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.*

*(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.*

**(ii) Article 243-T. Reservation of seats.—***(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.*

*(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.*

*(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.*

*(4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.*

*(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation*

*for women) under clause (4) shall cease to have effect on the expiration of the period specified in Article 334.*

*(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.*

**(iii) Article 243-U. Duration of Municipalities, etc.—***(1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer:*

*Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.*

*(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).*

*(3) An election to constitute a Municipality shall be completed,—*

*(a) before the expiry of its duration specified in clause (1);*

*(b) before the expiration of a period of six months from the date of its dissolution:*

*Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.*

*(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under clause (1) had it not been so dissolved.*

**(iv) Article 340. Appointment of a Commission to investigate the conditions of backward classes.—***(1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing*



*such Commission shall define the procedure to be followed by the Commission.*

*(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.*

*(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.*

**(v) Article 15(4).** *Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.*

**(vi) Article 15(5).** *Nothing in this article or in sub-clause (g) of clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.*

**(vii) Article 16(4).** *Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.*

#### **4. The provisions in State enactments**

The relevant provisions of the State enactments which are to be referred to and considered are :

**4.1** Section 9-A of U.P. Municipalities Act, 1916 which is as under:

**"Section 9-A Reservation of seats.** - *(1) In every municipality seats shall be reserved for the [Scheduled Castes, the Scheduled Tribes and the Backward Classes] and the number of seats so reserved shall*

*bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area [or of the Backward Classes in the Municipal area] bears to the total population of such area and such seats may be allotted by rotation to different wards in a municipality in such order as may be prescribed by rules:[Provided that the reservation for the backward classes shall not exceed twenty seven per cent of the total number of seats in the municipality.*

*Provided further that if the figures of population of the backward classes are not available, their population may be determined by carrying out a survey in the manner prescribed by rules.]*

*(2) [\* \* \*]*

*(3) Not less than one-third of the total number of seats reserved under [sub-section (1)] shall be reserved for the women belonging to the Scheduled Castes, the Scheduled Tribes or the Backward Classes, as the case may be.*

*(4) Not less than one-third of the total number of seats in a municipality including the number of seats reserved under sub-section (3) shall be reserved for women and such seats may be allotted by rotation to different wards in a municipality in such order as may be prescribed by rules.*

*[(5) The offices of President and[\* \* \*] of the Municipal Councils and Nagar Panchayat shall be reserved and allotted for the Scheduled Castes, the Scheduled Tribes and the Backward Classes and Women, in the manner given below :-*

*(1) Reservation and allotment of offices of the President. - (a) The reservation and allotment of offices of the President under this sub-section, shall be done separately for the Municipal Councils and Nagar Panchayats in the manner hereinafter provided.*

*(b) The number of offices to be reserved –*

*(i) for the Scheduled Castes or for the Scheduled Tribes or for the backward classes shall be determined in the manner that it shall bear, as nearly as may be, the same proportion to the total number of offices in the State as the population of the Scheduled Castes in the urban area of the State, or of the Scheduled Tribes in the urban area of the State, or of the backward classes in the urban area of the State bears to the total population of such area in the State and if in determining such number of offices, there comes a remainder then, if it is half or less than half of the divisor, it shall be ignored and if it is more than half of the divisor, the quotient shall be increased by one and the number so arrived at shall be the number of offices to be reserved for the Scheduled Castes or the Scheduled Tribes or the backward classes, as the case may be :*

*Provided that the number of offices to be reserved for the backward classes under this clause shall not be more than twenty-seven per cent of the total number of offices in the State;*

*(ii) for the women belonging to the Scheduled Castes, the Scheduled Tribes and the backward classes, as the case may be, under sub-section (3) shall not be less than one-third of the number of offices for the Scheduled Castes, Scheduled Tribes and for the backward classes and if in determining such number of offices there comes a remainder then the quotient shall be increased by one and the number so arrived at shall, as the case may be, the number of offices be reserved for women belonging to the Scheduled Castes, Scheduled Tribes and backward classes :*

*Provided that the number of offices to be reserved for the backward classes under this clause shall not be more than twenty-seven per cent of the total number of offices in the State;*

*(iii) for the women belonging to the Scheduled Castes, the Scheduled Tribes and the backward classes, as the case may be, under sub section (3) shall not be less than one-third of the number of offices for the Scheduled Castes, Scheduled Tribes and for the backward classes and if in determining such number of offices there comes a remainder then the quotient shall be increased by one and the number so arrived at shall, as the case may be, the number of offices be reserved for women belonging to the Scheduled Castes, Scheduled Tribes and backward classes.*

*(c) All Municipal Councils and Nagar Panchayats of the State shall be arranged in such serial order that the Municipal Councils or Nagar Panchayats having largest percentage of population of Scheduled Castes in the State, shall be placed at Serial Number 1 and Municipal Councils or Nagar Panchayats having lesser population of the Scheduled Castes than those shall be placed at number 2 and the rest shall likewise be placed respectively at succeeding numbers.*

*(d) Subject to item (ii) of sub-clause (b) the number of offices of the Presidents determined under sub-clause (b) for Municipal Councils or the Nagar Panchayats of the State shall be allotted to different Municipal Councils or Nagar Panchayats in the State, as the case may be, in the manner that –*

*(i) the number of offices determined under item (i) of sub-clause (b) for the offices of Scheduled Castes including the number of offices determined under item (ii) of the said sub-clause for the women belonging to the Scheduled Castes, shall be allotted to Scheduled Castes next to the Municipal Council or Nagar Panchayat placed at Serial No. 1 under sub-clause (c) :*

*Provided that such Municipal Council or Nagar Panchayats shall be first allotted to the women belonging to the Scheduled Castes:*

*(ii) the number of offices determined under item (i) of sub-clause (b) for the offices of Scheduled Tribes including the number of offices determined under item (ii) of the said sub-clause for the women belonging to the Scheduled Tribes be allotted to Scheduled Tribes serial-wise next to the last serial allotted under item (i) :*

*Provided that such Municipal Council or Nagar Panchayat shall be first allotted to the women belonging to the Scheduled Tribes.*

*(iii) the number of offices determined under item (i) of sub-clause (b), for the offices of backward classes including the number of offices determined under item (ii) of the said sub-clause for the women belonging to the backward classes shall be allotted to backward classes serial-wise next to the last serial number allotted under item (ii) :*

*Provided that such Municipal Council or Nagar Panchayat shall be first allotted to the women belonging to the backward classes.*

*(iv) the number of offices determined under item (ii) of sub-clause (b) excluding the officers determined under the said sub-clause for the women of Scheduled Castes, Scheduled Tribes and backward classes shall be allotted to the women serial-wise next to the last serial number allotted under item (iii).*

*(e) If on the basis of the population of Scheduled Castes or Scheduled Tribes in a Municipal Council or Nagar Panchayat-*

*(i) only one office could be reserved for the Scheduled Castes or for the Scheduled Tribes, as the case may be, such office shall be allotted to the women.*

*(ii) no office could be reserved for the Scheduled Castes or for the Scheduled Tribes, the order of allotment of offices referred in sub-clause (d) shall be so adhered to as if there is no reference in it to the*

*Scheduled Castes or to the Scheduled Tribes, as the case may be.*

*(f) The offices allotted in any previous election to the Scheduled Castes, the Scheduled Tribes, the backward classes or the women shall not be allotted in the subsequent election respectively to the Scheduled Castes, the Scheduled Tribes, the backward classes or the women and the offices in such subsequent election shall be allotted serially from the next to the last office allotted to the women in the previous election in the order referred to in sub-clause (d) in cyclic order.*

*["Explanation- I : It is hereby clarified that the words "previous election" and "subsequent election" as occurring in sub-clause (f) of this clause and elsewhere in the Act shall not include and shall be deemed to have never included the elections held in accordance with the provision's of the Uttar Pradesh Municipalities (Amendment) Ordinance, 2006 (Uttar Pradesh' Ordinance no. 3 Of 2006) and this Act as amended by the said Ordinance.*

*Explanation- II : Notwithstanding the repeal of the Uttar Pradesh Municipalities (Amendment) Ordinance 2006( Uttar Pradesh Ordinance No. 3 of 2006) and its substitution by the Uttar Pradesh Urban Local Self Government Laws' (Amendment) Act. 2006 (UP. Act no. 25 of 2006) or the judgment, order or decree of any Court. Tribunal or Authority it is hereby declared that the elections held in accordance with the provisions of the said Ordinance and this Act as amended by the said Ordinance shall not be deemed to be the "previous election" as contemplated under this section and the next elections to be held under this section accordingly shall not be deemed to be subsequent election”]*

*(2) [x x x]*

*(3) Allotment order. - (a) Notwithstanding anything contained in the foregoing clauses the State Government shall, determining the number of offices to*

*be reserved for the Scheduled Castes, Scheduled Tribes, Backward Classes and the women, by order published in the Gazette, allot the offices to the Municipalities.*

*(b) The draft of order under sub-clause (a) shall be published for objections for a period of not less than seven days.*

*(c) The State Government shall consider the objections, if any, but it shall not be necessary to hear in person on such objections unless the State Government considers it necessary so to do and thereupon it shall become final.*

*(d) The draft of order referred to in sub-clause (b) shall be published in at least one daily newspaper having wide circulation in the concerned district and shall also be affixed on the notice board of the offices of the District Magistrate and the concerned Municipality.*

*(6) The reservation of seats and offices of the Presidents for the Scheduled Castes and the Scheduled Tribes under this section shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution.*

*Explanation. - It is clarified that nothing on this section shall prevent the persons belonging to the Scheduled Castes, Scheduled Tribes, the Backward Classes and the women from contesting election to unreserved seats and offices."*

**4.2** Section 7 of the U.P. Municipal Corporations Act, 1959 is in *pari materia* with Section 9-A of U.P. Municipalities Act, hence the same is not being extracted here.

**4.3 Section 2(b) of U.P. State Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Back-ward Classes) Act, 1994** reads as under:

2. In this Act-

[(b) "**Other Backward Classes of citizens**" means the backward classes of citizens specified in Schedule I;]

**4.4 Scheduled -1** appended to U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Back-ward Classes) Act, 1994 is as under :

**[SCHEDULE - I]**  
[See Section 2( b)]

1. Ahir, Yadav, Gwala, Yaduvanshiya	23.Jogi
2. Sonar, Sunar,, Swarnkar	24.Jhoja
3. Jat.	25.Dhafali
4. Kurmi, Chanau, Patel,, Patanwar, Kurmi-Mall, Kurmi-Seinthwar	26.Tamoli, Barai,, Chaurasia
5. Giri	27.Teli, Samani,, Rogangar,, Sahu,, Rauniar, Gundhi,, Arrak
6. Gujar	28.Darji, Idrisi,, Kakutstha
7. Gosain	29.Dhiver
8. Lodh,, Lodha, Lodhi,, Lot,, Lodhi-Rajput	30.Naqqal
9. Kamboj	31.Nat (Those not included in Scheduled Castes Category)
10. Arakh,, Arakvanshiya	32.Naik
11.Kachchi,, Kachchi-Kushwaha, Shakya	33.Faqir
12.Kahar,, Kashyap	34.Banjara, Ranki, Mukeri, Mukerani
13.Kewat, Mallah, Nishad	35.Barhai,, Saifi, Vishwakarma,, Panchal, Ramgadhiya, Jangir, Dhiman
14.Kisan	36.Bari
15.Koeri	37.Beragi
16.Kumhar, Prajapati	38.Bind
17.Kasgar	39.Biyar
18.Kunjra or Raeen	40.Bhar, Raj-Bhar.
19.Gareria, Pal, Vaghel	41.Bhurji, Bharbhunja, Bhooj, Kandu, Kashaudhan
20.Gaddi, Ghoshi.	42.Bhathiara
21.Chikwa, Qassab Qureshi, Chak	43.Mali, Saini
22.Chhippi, Chipa	



44. Sweeper (Those not included in Scheduled Caste Category), Halalkhor	61. Khumra, Sangalarash, Hansiri
45.Lohar, Lohar-Saifi	62. Mochi
46.Lonia,. Nonia, Gole-thakur, LoniaChauhan	63. Khagi
47.Rangrez, Rangwa	64. Tanwar Singharia
48.Marchcha	65. Katuwa
49.Halwai. Modanwal	66. Maheegeer
50.Hajjam, Nai, Salmani, Savita, Sriwas	67. Dangi
51. Rai Sikh	68. Dhakar
52. Sakka-Bhisti,, Bhisti-Abbasi	69. Gada
53. Dhobi (Those not included in the Schedule Castes or Scheduled Tribes Category)	70. Tantawa
54. Kasera,, Thathera, Tamrakar	71. Joria
55. Nanbai	72. Patwa, Patahara, Patchara, Deovanshi
56. Mirshikari	73. Kalal, Kalwar, Kalar
57. Shekh Sarwari (Pirai), Peerahi	74. Manihar,, Kacher,, Lakhara
58. Mev, Mewati	75. Murao, Murai, Maurya
59. Koshta/Koshti	76. Momin (Ansar)
60. Ror	77. Muslim Kayastha
	78. Mirasi
	79. Naddar (Dhuniya),, Mansoori,, Kandere, Kadera, Karan (Karn)

**4.5** Section 2(a) of Uttar Pradesh State Commission of Backward Classes Act, 1996 reads as under :

*“2(a) “backward classes” means such classes of citizens as are defined in clause (b) of Section 2 of the Uttar Pradesh Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 as amended from time to time”.*

**4.6** Section 2 (1) of the Uttar Pradesh Municipalities Act, 1916 is extracted below-

**"2. Definitions.** - *In this Act unless there is something repugnant in the subject or context, -*

*[(1) "Backward classes" means the backward classes of citizens specified in Schedule I of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994;]"*

4.7 Section 2(51-A) of the Uttar Pradesh Municipal Corporation Act, 1959 reads as under-

*"2. Definitions. – In this Act unless there be something repugnant in the subject or context –*

.....

.....

*[(51-A) "backward classes" means the backward classes of citizens specified in Schedule I of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994;]"*

## **5. Submissions on behalf of the petitioners**

5.1 Arguments on behalf of the petitioners in all these matters have been led by Dr. L.P. Misra and Sri Sharad Pathak, Advocates who have been assisted by other learned counsels representing the petitioners in the respective writ petitions.

In support of the prayers in the writ petitions, arguments on behalf of the petitioners in this case primarily revolve around three judgments of Hon'ble Supreme Court, which are :

- (i) **K. Krishna Murthy (Dr.) and another Vs. Union of India & another, (2010)7 SCC 202.**
- (ii) **Vikas Kishanrao Gawali Vs. State of Maharashtra & Ors. (2021) 6 SCC 73**
- (iii) **Suresh Mahajan Vs. State of Madhya Pradesh and another, 2022 SCC Online SC 589.**

**5.2** Referring extensively to Constitution Bench judgment in the case of **K.Krishna Murthy (supra)**, it has been argued on behalf of the petitioners that Article 243-T(6) of the Constitution is only an enabling provision and since it does not contain any guideline as to the quantum of reservation to be provided to the Backward Class of citizens, it is for the State Government to provide for the same and such reservation cannot be provided unless it is preceded by an investigation into the existence of backwardness. It has further been contended that the phrase “backward class of citizens” occurring in Article 243-T does not convey the same meaning as the phrase “socially and economically backward class” occurring in Article 15(4) and Article 15(5) or the phrase “backward class of citizens” occurring in Article 16(4) of the Constitution of India.

**5.3** Further contention on behalf of the petitioners is that the criteria evolved for enforcing reservation made available under Article 15(4) and 16(4) cannot be applied in the context of reservation to be provided under Article 243-T(6) of the Constitution of India and that the provision of Article 243-T provides all together a distinct basis for reservation in local bodies for the reason that the purpose of providing reservation in local bodies is different from the purpose for which Articles 15(4) and 16(4) are enacted in the Constitution.

**5.4** According to Dr. Misra and his colleagues, the reservation policy contemplated in Articles 15(4) and 16(4) of the Constitution of India aims at improving access to higher education and public employment whereas the reservation policy as contemplated by Article 243-T aims at a different purpose and the purpose is to

improve the disadvantageous class of citizens in the realm of political representation. On behalf of the petitioners, it has been argued that social, educational and economic backwardness cannot be equated with backwardness to be taken into account for providing reservation in the elections to urban self-government bodies. Further submission is that any criteria adopted for providing reservation for achieving access to education and public employment cannot be applied for providing reservation for reserving seats and offices of chairpersons in local self government institutions.

**5.5** Borrowing further from the Constitution Bench judgment in the case of **K. Krishna Murthy (supra)**, submission has been made that backwardness in the social and economic sense though can also act as a barrier to effective political participation and representation, however, such backwardness cannot be the sole criteria for identifying the backward class of citizens who can be said to be not adequately politically represented.

**5.6** Taking the argument further, it has been contended on behalf of the petitioners that in view of the mandate of Hon'ble Supreme Court in the case of **K. Krishna Murthy (supra)**, it was incumbent upon the State Government to have periodically undertaken the exercise of collecting and collating adequate materials and documents for conducting an investigation into the backwardness that acts as barriers to political representation on the basis of collection of contemporaneous empirical data. Submission is that impugned Notification has been issued without any such exercise and though the Notification is tentative, which provides for

reservation of seats and offices of chairperson of the municipal bodies in the State of U.P., however, from the Notification itself it is clear that State intends to provide reservation to Backward Class of citizens which is impermissible in absence of the exercise as mandated by Hon'ble Supreme Court. According to petitioners, in absence of any such exercise as mandated by Hon'ble Supreme Court in the case of **K. Krishna Murthy (supra)**, the impugned Notification cannot be permitted to be sustained.

**5.7** Reference has also been made to the judgment of three Judge Bench of Hon'ble Supreme Court in the case of **Vikas Kishanrao Gawali (supra)** and it has been argued on the said basis that the said judgment though was delivered in a case which had travelled to Hon'ble Supreme Court from State of Maharashtra, however, it is binding on all States and Union Territories throughout the country including the State of U.P. Referring further to the said judgment in the case of **Vikas Kishanrao Gawali (supra)**, it has been argued that Hon'ble Supreme Court has made it mandatory for every State that before reserving the seats in local bodies for Backward Class of citizens, the triple test/conditions are required to be complied with.

**5.8** It has been argued further that it is not in dispute that the State of U.P. has not yet set up the dedicated Commission to conduct contemporaneous rigorous empirical inquiry into the nature and implications of the backwardness and has also, thus, not specified the proportion of reservation required to be provided in the elections to local bodies in the light of the recommendations of the Commission and hence the elections by reserving the seats and

offices of chairpersons of the municipal bodies in the State of U.P. cannot be permitted to be conducted. He has further argued that as mandated by Hon'ble Supreme Court in the case of **Vikas Kishanrao Gawali (supra)** and as also in the case of **Suresh Mahajan (supra)**, in absence of fulfillment of triple test/conditions, no seat for backward class of citizen can be reserved and elections ought to be held by providing that all such seats shall be available to be contested by unreserved/open category candidate.

**5.9** Reference to the judgment in the case of **Suresh Mahajan (supra)** rendered by Hon'ble Supreme Court has also been made on behalf of the petitioners to impress upon the Court that until the triple test/conditions are completed in all respects by the State of U.P. no reservation for backward class of citizens can be provided and in case such an exercise cannot be completed before issue of election programme, the seats, except those reserved for Scheduled Castes and Scheduled Tribes, must be notified for general/open category.

**5.10** So far as challenge to the Notification dated 12.12.2022 issued by the State Government, whereby all the District Magistrates have been directed to authorize operation of the bank accounts of the respective municipalities by the joint signatures of the Executive officers and the senior most member of the U.P. Palika Centralized Services (Accounts Cadre), is concerned, it has been argued that the said Government Order could not have been issued by the State Government for the reason that it is not referable to any provision either in the U.P. Municipalities Act,

1916 or in the U.P. Municipal Corporation Act, 1959. It has been contended that the reason indicated in the said Government Order dated 12.12.2022 to the effect that the same has been issued in compliance of the judgment and order dated 05.12.2011, passed by this Court in the case of **Sandeep @ Sandeep Mehrotra and others Vs. State of U.P. and others, Writ Petition No. 11226 of 2011**, is highly misconceived and in fact the State cannot take any aid of the said judgment of the Court, dated 05.12.2011 to justify issuance of the Government Order dated 12.12.2022.

**5.11** As already noted above in one of the writ petitions, a prayer has been made that in the light of the judgment rendered by the Hon'ble Supreme Court in the case of **National Legal Services Authority Vs. Union of India, decided on 15.04.2014, Writ Petition (Civil) No. 400 of 2012**, the State Government may be directed to treat the Transgenders as backward class of citizens while conducting empirical survey for the purpose of ascertaining backwardness and include them in the said class of citizens for the purpose of providing reservation in the elections for seats and offices of the chairpersons of the various municipal bodies.

**5.12** It has also been argued on behalf of the petitioners that the State cannot take shelter in Schedule-I appended to the U.P. Public Services(Reservation for Scheduled Castes, Scheduled Tribes and Other Back-ward Castes) Act, 1994 to submit that castes mentioned therein form the backward class of citizens for the purpose of providing reservation in the elections of the Municipal Bodies. Elaborating reasons for this argument, it has been contended that the purpose of enacting 1994 Reservation Act is to provide

reservation as contemplated in Article 15(4) and 16(4) of the Constitution of India for socially and educationally-backward class of citizens whereas purpose of providing reservation as contemplated in Article 243-T(6) is to provide level playing field in the context of elections to the local bodies to backward class of citizens who are politically backward in the sense that they are not adequately represented in these bodies. Submission is that determination of adequate/inadequate political representation or political backwardness has to be made on the basis of collection and collation of material and empirical data for the said purpose. It is, thus, argued that the castes mentioned in Schedule-I of the Reservation Act, 1994 cannot be permitted to be the basis of determination of Backward Class of citizens for the purpose of providing reservation as contemplated under Article 243-T(6) of the Constitution of India.

**5.13** It has also been argued by the learned counsel representing the petitioners that though Section 9-A(5)(1)(f) of the Municipalities Act provides for adopting rotational process or cyclic order for the purpose of reserving offices of the Chairpersons to Scheduled Castes and Scheduled Tribes and Backward Class or the women, however, the State has not been following the said rotation and has not been adhering to the cyclic order as contemplated in the said provision in the past elections. In this view, the submission is that the impugned Notification, which reflects such rotation not being followed, is liable to be struck off on this count as well.



**5.14** On the basis of the aforesaid arguments and contentions, it has, thus, been prayed that the impugned Notification be quashed and State Government may be directed to first complete the exercise of triple test and fulfill the triple conditions as mandated by Hon'ble Supreme Court in the case of **Vikas Kishanrao Gawali (supra)** and then hold the elections. It has also been prayed that since the term of municipal bodies is to come to an end very soon, a direction be issued to issue Notification for elections at the earliest without reserving the seats and offices of Chairpersons for Backward Class of citizens and making them available to open/general category of citizens to contest the elections.

## **6 Submissions on behalf of the State Government**

**6.1** State of U.P. in this case is represented by the learned Additional Advocate General, Sri V.K. Shahi, learned Chief Standing Counsel, Sri Abhinav N. Trivedi and learned Additional Chief Standing Counsel, Sri Amitabh Rai.

**6.2** Sheet anchor of argument on behalf of the State as advanced by the Sri Amitabh Rai, learned Additional Chief Standing Counsel, is that in absence of any challenge to the provisions contained in Section 9-A of the U.P. Municipalities Act as also to Section 7 of the U.P. Municipal Corporation Act, the prayers made in the writ petition cannot be granted. He has further stated that the seats and the offices of the Chairpersons of the municipalities at different levels have been reserved as per the provisions contained in Section 9-A of the U.P. Municipalities Act and also as per Section 7 of the U.P. Municipal Corporation Act read with statutory rules framed under the said enactment which are known as U.P. Municipalities

(Reservation and allotment of Seats) Rules, 1994. Accordingly, the submission made in this regard by Sri Rai is that until and unless the provisions under which the State intends to reserve the seats and offices of the chairpersons of the municipalities available under the said enactment and rules are challenged, the petitioners are not entitled to any relief which have been prayed for.

**6.3** Sri Amitabh Rai, learned Additional Chief Standing Counsel has further argued that so far as reservation to backward class of citizens under Article 243-T is concerned, immediately after insertion of Part IXA in the Constitution of India, the same has been provided in all the elections to municipal bodies by making exhaustive amendments in the Municipal laws by means of U.P. Act No. 12 of 1994. He has stated that Section 2(1) of the U.P. Municipalities Act, 1916 defines backward class to mean backward class of citizens as specified in Schedule-I of the Reservation Act, 1994. He has further stated that similarly Section 2(51-A) of the U.P. Municipal Corporation Act, 1959 also defines backward class of citizens as specified in Schedule-I of the Reservation Act, 1994. It has, thus, been contended that until and unless these provisions, namely, Section 2(a) and Section 2(51-A) of the U.P. Municipalities Act, 1916 and U.P. Municipal Corporation Act, 1959 respectively are also challenged and struck down, reservation to Other Backward Class of citizens is to be provided in the elections of the Municipal Bodies as per these two State Legislations.

**6.4** It has also been argued on behalf of the State that in pursuance of the judgment of Hon'ble Supreme Court in the case of **Indira Sawhney Vs. Union of India, reported in 1992 Supp. (3)**

SCC 217, the State Government had initially constituted a Commission for backward class by an executive Notification dated 22.03.1993, however, subsequently, the constitution of said Commission has been made by an enactment, known as U.P. State Commission for Backward Classes Act, 1996. He has further submitted that Section 2(a) of the 1996 Act defines backward classes to mean such classes of citizens as are defined in clause 2(b) of the Reservation Act, 1994, that is to say, the castes included in Schedule-I appended to 1994 Reservation Act, 1994 will form Backward Class of citizens for the purposes of providing reservation in the context of elections to all the municipal bodies in the State. Submission is that accordingly, so far as the State of U.P. is concerned, backward class of citizens would mean those included in Scheduled-I appended to Reservation Act, 1994 and adhering to the same the State has issued the impugned Notification dated 05.12.2022 and accordingly there does not exist any flaw or illegality so far as the prescription for reservation made by the State in the elections to the Municipal Bodies is concerned.

**6.5** Sri Amitabh Rai and Sri Abhinav N. Trivedi have further argued on behalf of the State that though the provisions akin to Section 9-A of the U.P. Municipalities Act, 1916 and Section 7 of the U.P. Municipal Corporation Act, 1959 are available in U.P. Panchayat Raj Act and Chhetra Panchayat and Zila Panchayat Act were put before the Constitution Bench of Hon'ble Supreme Court in the case of **K. Krishna Murthy (supra)**, however, Hon'ble Supreme Court in the said case did not strike them off and

accordingly plea being raised by the petitioners that there is no need of challenging the statutory prescriptions is not available to them.

**6.6** Further submission on behalf of the State is that so far as fulfillment of requirement of triple test/conditions is concerned, the same in the State of U.P. are fulfilled as the reservation being provided does not exceed the maximum limit of 50%.

**6.7** It has also been argued that the purpose for which dedicated Commission has been mandated to be constituted by the Hon'ble Supreme Court is being fully achieved by limiting reservation to the maximum ceiling of 50% and further by providing reservation to backward class of citizens not exceeding 27% and also by maintaining the reservation to backward class of citizens in proportion to their population vis-a-vis the total population.

**6.8** On behalf of the State, a Government Order dated 07.04.2017 has been referred to for submitting that contemporaneous rigorous empirical inquiry is being conducted in the State of U.P. as per the mechanism provided under the said Government Order. It has also been brought to our notice that the State Government has directed all the District Magistrates by means of order dated 21.06.2022 to conduct rapid survey for the purpose of determining the population of backward class of citizens in every ward of different municipal bodies. Submission is that the Government Order dated 07.04.2017 contains elaborate instructions to enumerators for the purpose of conducting rapid survey for counting the number of persons belonging to backward class of citizens in the municipalities and hence the procedure prescribed in the Government Order dated 07.04.2017, which is being strictly followed, fulfills the

requirement of rigorous contemporaneous empirical inquiry as directed by the Hon'ble Supreme Court in the case of **Vikas Kishanrao Gawali (supra)**.

**6.9** So far as the prayer in one of the writ petitions for providing reservation to Transgenders as backward class of citizens is concerned, it has been submitted on behalf of the State that the judgment in the case of **National Legal Services Authority (supra)** is confined to taking steps to treat them socially and educationally backward class of citizens and extend the benefits of reservation in admission in educational institutions and in public employment. It has, thus, been argued that, however, the said judgment does not contain any direction for providing reservation in the elections for Municipal Bodies. Hence, the submission is that the said writ petition is misconceived.

**6.10** In response to the submissions made on behalf of the petitioners that the rotation as contemplated in Section 9A(5)(1)(f) of the Municipalities Act is not being followed, it has been contended on behalf of the State firstly, that such rotation or cyclic order in reservation is being maintained and secondly, that it can be an individual grievance in relation to a particular seat or office of Chairman in a particular municipal body, hence if such an objection is raised in a particular case, the same shall be decided by the authority concerned.

**6.11** Making the aforesaid submissions, the State has vehemently opposed the writ petitions and has submitted that all the writ petitions deserve to be dismissed which shall pave the way to the State authorities to conduct the elections of Municipal Bodies at

various levels which shall be in fulfillment of the constitutional and statutory mandate for constituting these bodies at the earliest as the term of these Municipal Bodies are coming to an end between 12.12.2022 and 31.01.2023. The prayer thus is that the writ petitions be dismissed at their threshold.

**6.12** Representing the State Election Commission, Sri Rakesh Chaudhary and Sri Anurag Kumar Singh have also opposed the writ petitions by adopting the submissions made on behalf of the State. It has been submitted by them that unless Section 9-A of the U.P. Municipalities Act and Section 7 of the U.P. Municipal Corporations Act are declared *ultra-vires*, the writ petitions are not maintainable which are liable to be dismissed. Further submission is that the judgment in the case of **Indira Sawhney (supra)** was not confined to reservation for Other Backward Class in educational institutions and public employment but the primary issue which was considered by the Hon'ble Supreme Court in the said case was in respect of ascertaining social, educational and economic backwardness and accordingly Other Backward Class as defined in the Reservation Act, 1994 will form the Backward Class in the State of U.P. for the purpose of providing reservation in terms of Article 243-T of the Constitution of India. The prayer, thus, is that the writ petitions be dismissed.

## **7 Issues**

**7.1** On the basis of pleadings available on record as also considering the rival submissions made by the learned counsels representing the respective parties, the following issues emerge for our consideration in this case :

(1) As to whether in the facts as pleaded by the State, the requirement of triple test/conditions as mandated by Hon'ble Supreme Court in the cases of **K. Krishna Murthy (supra)** and **Vikas Kishanrao Gawali (supra)** stand fulfilled ? If no, the consequences thereof.

(2) As to whether in absence of challenge to the relevant statutory prescriptions in the State enactments which provide for reservation to the backward class of citizens in terms of Article 243-T(6), the petitioners are entitled to the reliefs which have been prayed for ?

(3) As to whether the Government Order dated 12.12.2022 is legally valid?

(4) As to whether any direction can be issued to include the transgenders amongst the backward class of citizens, and accordingly, to provide reservation to them in the context of elections to constitute Urban Local Bodies?

(5) Having regard to the facts and circumstances of the case, what orders and directions need to be passed and issued by the Court ?

## **8. Discussion**

**8.1** Issues which fall for our consideration in this case have already been formulated in the preceding paragraph of the judgment.

**8.2** With insertions of Part IX-A in the Constitution of India by enacting the Constitution (74th) Amendment Act, 1992, the urban self-government institutions throughout the country have been

raised to the status of constitutional entities. Objects of insertion of Part IX A of the Constitution have been enumerated in SOR of the Constitution (74th) Amendment Act, 1992, according to which one of the objects is to provide reservation of seat in every municipality. From a bare reading of SOR, it is clear that one of the objects of insertion of Part IXA is to provide reservation for Scheduled Castes and Scheduled Tribes in proportion to their population of which not less than one-third is to be for women. Another object in relation to seats is to provide reservation for women which shall not be less than one-third of total number of seats. So far as providing reservation of seats in favour of backward class of citizens is concerned, SOR mentions that such reservation shall be permissible if it so provided by the Legislature of the States.

**8.3** In tune with the objects as enunciated in the SOR of the Constitution (74th) Amendment Act, 1992, Article 243-T provides for constitutionally mandated reservation to the Scheduled Castes, Scheduled Tribes in proportion to their population in the municipal areas, however, Sub-section (6) of Section 243-T does not contain a straight away mandate for providing reservation of seats or offices of the Chairpersons in favour of the backward class of the citizens but it contains an enabling provision which permits Legislature of a State to make such provision. It is to be noticed that so far as quantum of reservation to the Scheduled Castes, Scheduled Tribes and women is concerned, Article 243-T clearly and unambiguously provides for the same. However, the nature and quantum of reservation to be provided for backward class of citizens has been left to the wisdom of Legislature of a State.



**8.4** The Constitution Bench of Hon'ble Supreme Court in the case of **K. Krishna Murthy (supra)** has stated that underline scheme of Article 243-T is to ensure fair representation of social diversity in the local bodies so as to contribute to empowerment of the traditionally weaker section of the society. Hon'ble Supreme Court in this case also recognized that preferred means for pursuing such policy is the reservation of seats and Chairpersons of the municipal bodies in favour of the Scheduled Castes, Scheduled Tribes, women and backward class of citizens. However, as noticed above, the nature and quantum of reservation to the Scheduled Castes, Scheduled Tribes and women is constitutionally mandated, whereas as, what should be the nature and quantum of reservation to be provided to backward class of citizens has been left to the wisdom of the State Legislatures to determine.

**8.5** It is in the background of the aforesaid Constitutional provision contained in Part IXA of the Constitution that the Municipal Laws in the State of U.P. were extensively amended by enacting U.P. Act No. 12 of 1994. By the said Amending Act in the definition clause contained in U.P. Municipalities Act as also U.P. Municipal Corporation Act "backward classes" has been defined to mean the backward class of citizens specified in Schedule-I of the Reservation Act, 1994. Section 2(1) of the U.P. Municipalities Act and Section 2(51-A) of the U.P. Municipal Corporation Act may be referred to in this regard.

### **Section 2(1) of UP Municipalities act, 1916**

**2. Definitions.** - *In this Act unless there is something repugnant in the subject or context, -*

*[(1) "Backward classes" means the backward classes of citizens specified in Schedule I of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994;]*

**Section 2(51-A) U.P municipal Corporation Act, 1959**

**2. Definitions.** – *In this Act unless there be something repugnant in the subject or context –*

.....

.....

*[(51-A) "backward classes" means the backward classes of citizens specified in Schedule I of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994;]*

**8.6** Thus, so far as the State of U.P. is concerned, for the purpose of providing reservation to backward class of citizens in the elections of the Municipal Bodies as per the requirement of Article 243-T, it has statutorily been provided that the backward class shall comprise of castes enumerated in Schedule-I of the Reservation Act, 1994. Section 9-A of the U.P. Municipalities Act, the provision analogous to which are available in Section 7 of the U.P. Municipal Corporation Act, provides that so far as the quantum of reservation to the Scheduled Castes and Scheduled Tribes is concerned, the same shall be in proportion to their population. This provision for reservation for Scheduled Castes and Scheduled Tribes available in these two State enactments is perfectly in tune with the constitutionally mandated quantum of reservation to these categories of citizens.

**8.7** In respect of reservation for backward class of citizens, Section 9-A of the U.P. Municipalities Act and Section 7 of the U.P. Municipal Corporation Act provide that backward class of citizens shall also be entitled to reservation of seats and number of offices of Chairpersons in the Municipalities in proportion to their population to the total population. Thus, State of U.P. does not make any difference in the quantum of reservation to be provided to the Scheduled Castes and Scheduled Tribes and also to the Other Backward Class of citizens as both are based on the proportion of population of these category of citizens to the total population.

**8.8** For the said purpose, as asserted by the learned counsel representing the State, Government Order was issued on 07.04.2017 which provides for conducting rapid survey for determining the population of Other Backward Class of citizens. Based on such rapid survey in each Constituency of the Municipality, as per submission on behalf of the State, seats are reserved in proportion to population of the backward class of citizens to the total population in the Constituency/Ward concerned.

**8.9** On the basis of the aforesaid exercise being conducted in the State of U.P. in terms of the provision contained in Government Order dated 07.04.2017, the State has attempted to submit that the triple test/conditions as mandated by Hon'ble Supreme Court in the case of **K. Krishan Murthy (supra)** and **Vikas Kishanrao Gawali(supra)** are being complied with and hence the method for providing reservation to backward class of citizens does not suffer from any flaw or illegality. For testing the aforesaid submission, we need to reflect upon as to what occasioned the Hon'ble Supreme

Court to call for conducting contemporaneous rigorous empirical enquiry and postulate triple test/conditions which are required to be complied with by the State before reserving the seats in local bodies for backward class of citizens.

**8.10** It is not in dispute that as mandated by Hon'ble Supreme Court in **K.Krishan Murthy (supra)** and **Vikas Kishanrao Gawali (supra)** a dedicated Commission has not been constituted by State of Uttar Pradesh for undertaking contemporaneous rigorous empirical enquiry into the nature and implications of the backward class qua local bodies. What has been attempted to be argued is that the exercise being conducted by the State in terms of the Government Order dated 07.04.2017 is the same as is to be conducted by the dedicated Commission mandated by the Hon'ble Supreme Court.

**8.11** Any inquiry or study into the nature and implications of the backwardness qua local bodies necessarily involves ascertainment of representation in the local bodies from amongst the citizens forming traditionally disadvantageous class. Such exercise cannot be confined to counting of heads alone as is being done through exercise which is being undertaken by the State in terms of the Government Order dated 07.04.2017.

**8.12** What the Government Order dated 07.04.2017 provides is that in every Constituency/Ward population of Other Backward Class as defined in Scheduled-I of the Reservation Act, 1994 be ascertained and once the population of such backward class is ascertained, reservation is being provided in proportion to their population to the total population in the area.

**8.13** Such an exercise as contemplated and being conducted under Government Order dated 07.04.2017 misses a very crucial factor for determination of backwardness or disadvantageous situation concerning a class or group of citizens who are inadequately represented in the Municipal Bodies in the State and what is missed is that the Government Order does not provide for inquiry into with of political representation of backward class of citizens in the Municipal Bodies.

**8.14** By treating the castes enumerated in Schedule-I of the Reservation Act, 1994 as backward class of citizens for the purpose of providing reservation in the elections of the local bodies what the State is doing that the State is treating the nature of backwardness requisite for providing reservation in admission to educational institutions and public employment as the requisite backwardness for providing reservation to seats and offices of the Chairpersons in the Municipal Bodies. In this regard we may refer to the very purpose for which State of U.P. has enacted Reservation Act, 1994 and the purpose is to provide for reservation in public services and posts in favour of persons belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Class of citizens. Section 3 of the Reservation Act, 1994 provides that in public services and posts at the stage of direct recruitment 21% of the vacancies shall be reserved for Scheduled Castes, 2% of the vacancies shall be reserved for Scheduled Tribes and 27% of the vacancies shall be reserved for Other Backward Class of citizens. As per the definition clause 2(b) of the said Act, Other Backward Class of citizens means the backward class of citizens specified in Schedule-I appended to

the said Act. Schedule-I appended to the 1994 Reservation Act enlists certain castes and accordingly the persons belonging to the said castes specified in the Schedule-I are entitled to 27% reservation in public services and posts reserved for Other Backward Class of citizens.

**8.15** Since the definition clauses occurring in U.P. Municipalities Act, 1916 and U.P. Municipal Corporation Act, 1959 define "backward class" to mean backward class of citizens specified in Schedule-I appended to Reservation Act, 1994, as such it is only the persons belonging to the castes specified in Schedule-I who are being given reservation in the context of constitution of the Municipal Bodies as well. Thus, what the State of U.P. has been doing is that so far as identifying the person belonging to Other Backward Class of citizens are concerned, it is treating the persons belonging to the castes as given in the Schedule-I of 1994 Reservation Act as Other Backward Class of citizens for providing reservation in the elections to Municipal Bodies.

**8.16** So far as the quantum of reservation to be provided to backward class of citizens is concerned, as stated by learned State Counsel, the State has been undertaking an exercise as per Government Order dated 07.04.2017 where the population of persons belonging to castes enumerated in Schedule-I of 1994 Reservation Act is being determined and based on the proportion of population of members belonging to these castes to the total population in the area, reservation is being provided. Such an exercise as being conducted by the State of U.P., which has been taken aid of by the State Counsel to justify that the State has

satisfied the triple test criteria, in our considered opinion, does not fulfill the requirement of triple test/conditions.

**8.17** Our reason to say that exercise being conducted under the Government Order dated 07.04.2017 does not fulfill the triple test criteria/conditions is that in the said exercise it is only the population of Other Backward Class of citizens in terms of Schedule-I appended to 1994 Reservation Act which is being determined, however, so far as the representation of the backward class of citizens in the Municipal Bodies is concerned, the said Government Order does not make any such provision for determination of inadequacy/adequacy of representation in the Municipal Bodies.

**8.18** As observed by Hon'ble Supreme Court in **K.Krishna Murthy(supra)**, the said case had presented good opportunity to clarify whether phrase "backward classes" which appears in Article 243-T(6) is coextensive with the "socially and educationally backward classes" contemplated under Articles 15(4) and 15(5) or with the under-represented backward classes as contemplated under Article 16(4) of the Constitution of India. The plea taken before the Hon'ble Supreme Court by the Union of India in **K.Krishna Murthy (supra)** was that the spirit behind Article 243-T was akin to Articles 15(3), 15(4) and 16(4) which have enabled different forms of affirmative action in order to pursue the goal of substantive equality. Argument made on behalf of the Union of India in the said case was that the phrase "backward classes" which appears in Article 243-T(6) should be coterminous with the Socially and Educationally Backward Classes identified for the purpose of

reservation enabled by Article 15(4). In this regard Para 49 of the judgment in the case of **K. Krishna Murthy(supra)** is extracted herein below :

*"49.The learned Solicitor General further contended that the spirit behind Articles 243-D and 243-T was akin to Articles 15(3), 15(4) and 16(4) which have enabled different forms of affirmative action in order to pursue the goal of substantive equality. In this sense, the learned SG has taken a definitive stand by suggesting that the phrase "backward classes" which appears in Articles 243-D(6) and 243-T(6) should be coterminous with the Socially and Educationally Backward Classes (SEBCs) identified for the purpose of reservation enabled by Article 15(4)".*

**8.19** However, Hon'ble Supreme Court did not agree with the said submission made on behalf of the Union of India; rather it observed in Para-51 of the report that the principles that have been evolved for conferring benefit of reservation contemplated by Articles 15(4) and 16(4) cannot be mechanically applied in the context of reservations contemplated by Article 243-T. Hon'ble Supreme Court further observed that Article 243-T forms a distinct and independent constitutional basis for reservation in local self-government institutions, the nature and purpose of which is different from the reservation policies framed for providing access to higher education and public employment in terms of Article 15(4) and 16(4) respectively. Para-51 of the judgment in the case of **K.Krishna Murthy (supra)** is extracted herein below :

*"51.Before addressing the contentious issues, it is necessary to examine the overarching considerations behind the provisions for reservations in elected local bodies. At the outset, we are in agreement with Shri Rajeev Dhavan's suggestion that the principles that have*



*been evolved for conferring the reservation benefits contemplated by Articles 15(4) and 16(4) cannot be mechanically applied in the context of reservations enabled by Articles 243-D and 243-T. In this respect, we endorse the proposition that Articles 243-D and 243-T form a distinct and independent constitutional basis for reservations in local self-government institutions, the nature and purpose of which is different from the reservation policies designed to improve access to higher education and public employment, as contemplated under Articles 15(4) and 16(4) respectively."*

**8.20** The Constitution Bench of Hon'ble Supreme Court in **K. Krishna Murthy (supra)** further agreed with the argument raised before it that the nature of disadvantages which restrict access to education and employment cannot be readily equated with disadvantages in the realm of the political representation. Further observation made by Hon'ble Supreme Court in this regard is that the backwardness in the social and economic sense does not necessarily imply political backwardness. Elaborating the difference between the nature of reservation provided under Article 243-D and under Article 15(4) and 16(4), Hon'ble Supreme Court in **K. Krishna Murthy (supra)** also observed that there is an inherent difference between the nature of benefits that accrue from access to education and employment on one hand and political representation at the grassroots level on the other hand. Hon'ble Supreme Court further states in the said case that while access to higher education and public employment increases the likelihood of the socio-economic upliftment of the individual beneficiaries, participation in local self-government is intended as a more immediate measure of empowerment for the community to which the elected

representative belongs to. Para-55 of the said judgment in **K. Krishna Murthy (supra)** is relevant here which is quoted below :

*"55.It must be kept in mind that there is also an inherent difference between the nature of benefits that accrue from access to education and employment on one hand and political representation at the grassroots level on the other hand. While access to higher education and public employment increases the likelihood of the socio-economic upliftment of the individual beneficiaries, participation in local self-government is intended as a more immediate measure of empowerment for the community that the elected representative belongs to".*

8.21 Hon'ble Supreme Court in **K. Krishna Murthy (supra)** also recognizes the principle that there cannot be an exclusion of the "creamy layer" in the context of political representation. Para-56 of the judgment in **K. Krishna Murthy (supra)** is again relevant which is extracted herein below :

*"56.The objectives of democratic decentralisation are not only to bring governance closer to the people, but also to make it more participatory, inclusive and accountable to the weaker sections of society. In this sense, reservations in local self-government are intended to directly benefit the community as a whole, rather than just the elected representatives. It is for this very reason that there cannot be an exclusion of the "creamy layer" in the context of political representation. There are bound to be disparities in the socio-economic status of persons within the groups that are the intended beneficiaries of reservation policies. While the exclusion of the "creamy layer" may be feasible as well as desirable in the context of reservations for education and employment, the same principle cannot be extended to the context of local self-government".*

8.22 Noting the difference between social and economic backwardness and political backwardness, Hon'ble Supreme Court

in **K.Krishna Murthy(supra)** also felt the need of advising the State Governments to reconfigure their reservation policy wherein beneficiaries under Article 243-T(6) need not necessarily be coterminous with the Socially and Educationally Backward Classes [for the purpose of Article 15(4)] or even the backward classes that are underrepresented in government jobs [for the purpose of Article 16(4)]. Paragraph-63 of the report in **K. Krishna Murthy (supra)** is extracted herein below for ready reference :

*"63.As noted earlier, social and economic backwardness does not necessarily coincide with political backwardness. In this respect, the State Governments are well advised to reconfigure their reservation policies, wherein the beneficiaries under Articles 243-D(6) and 243-T(6) need not necessarily be coterminous with the Socially and Educationally Backward Classes (SEBCs) [for the purpose of Article 15(4)] or even the backward classes that are underrepresented in government jobs [for the purpose of Article 16(4)]. It would be safe to say that not all of the groups which have been given reservation benefits in the domain of education and employment need reservations in the sphere of local self-government. This is because the barriers to political participation are not of the same character as barriers that limit access to education and employment. This calls for some fresh thinking and policy-making with regard to reservations in local self-government.*

**8.23** In the case of **K. Krishna Murthy (supra)** apart from emphasizing on determination of political nature of backwardness for the purpose of providing reservation under Article 243-T(6), Hon'ble Supreme Court also provided that in any situation upper ceiling of 50% with respect to vertical reservations in favour of Scheduled Castes/Scheduled Tribes/Other Backward Classes should

not be breached. Thus, to give a shape to the discussions and observations made, the Constitution Bench of Hon'ble Supreme Court in **K. Krishna Murthy (supra)** arrived at five conclusions which are enumerated in Paragraph-82 of the report which reads as under :

*"82.In view of the above, our conclusions are:*

*(i) The nature and purpose of reservations in the context of local self-government is considerably different from that of higher education and public employment. In this sense, Article 243-D and Article 243-T form a distinct and independent constitutional basis for affirmative action and the principles that have been evolved in relation to the reservation policies enabled by Articles 15(4) and 16(4) cannot be readily applied in the context of local self-government. Even when made, they need not be for a period corresponding to the period of reservation for the purposes of Articles 15(4) and 16(4), but can be much shorter.*

*(ii) Article 243-D(6) and Article 243-T(6) are constitutionally valid since they are in the nature of provisions which merely enable the State Legislatures to reserve seats and chairperson posts in favour of backward classes. Concerns about disproportionate reservations should be raised by way of specific challenges against the State legislations.*

*(iii) We are not in a position to examine the claims about overbreadth in the quantum of reservations provided for OBCs under the impugned State legislations since there is no contemporaneous empirical data. The onus is on the executive to conduct a rigorous investigation into the patterns of backwardness that act as barriers to political participation which are indeed quite different from the patterns of disadvantages in the matter of access to education and employment. As we have considered and decided only the constitutional validity of Articles 243-D(6) and 243-T(6), it will be open to the petitioners or*

*any aggrieved party to challenge any State legislation enacted in pursuance of the said constitutional provisions before the High Court. We are of the view that the identification of “backward classes” under Article 243-D(6) and Article 243-T(6) should be distinct from the identification of SEBCs for the purpose of Article 15(4) and that of backward classes for the purpose of Article 16(4).*

*(iv) The upper ceiling of 50% vertical reservations in favour of SCs/STs/OBCs should not be breached in the context of local self-government. Exceptions can only be made in order to safeguard the interests of the Scheduled Tribes in the matter of their representation in panchayats located in the Scheduled Areas.*

*(v) The reservation of chairperson posts in the manner contemplated by Articles 243-D(4) and 243-T(4) is constitutionally valid. These chairperson posts cannot be equated with solitary posts in the context of public employment”.*

**8.24** From conclusion (iii) as can be found in paragraph-82 of the report in the case of **K. Krishna Murthy (supra)** quoted above, we can have an idea as to why the need of conducting rigorous investigation into the patterns of backwardness that act as barriers to political participation by collecting contemporaneous empirical data was felt. It is to be noticed that the State of U.P. was not only a party to the proceedings of the said case of **K. Krishan Murthy (supra)** but it was represented as well and submissions were also advanced on its behalf. Hon'ble Supreme Court found itself not in a position to examine the claims about over-breadth in the quantum of reservations provided for backward class of citizens under the Legislation which was challenged before it for the reason that no contemporaneous empirical data was available before the Supreme Court at that point of time. Accordingly, it is in the light of the

aforesaid circumstance that Hon'ble Supreme Court observed in **K. Krishna Murthy (supra)** that onus is on the executive to conduct a rigorous investigation into the patterns of backwardness that act as barriers to political participation. In the same breath, the Hon'ble Supreme Court also observed that the patterns of the backwardness which worked as barriers to political participation are quite different from the patterns of disadvantages in the matter of access to education and employment.

**8.25** If we examine the exercise being undertaken by the State Government under the Government Order dated 07.04.2017, what we find is that the said exercise, if tested on the basis of observations made by the Hon'ble Supreme Court in **K. Krishna Murthy (supra)**, cannot be justified.

**8.26. Vikas Kishanrao Gawali (supra)**, which had emanated from State of Maharashtra. Extensively referring to the judgment of Constitution Bench in **K. Krishna Murthy (supra)** in **Vikas Kishanrao Gawali (supra)** Hon'ble Supreme Court has clearly observed that the State authorities are obliged to fulfill the pre-conditions before reserving the seats for backward class of citizens in local bodies. Hon'ble Supreme Court further observed that the foremost requirement is to collate adequate materials or documents that may help in identification of the Backward Classes for the purpose of reservation by conducting a contemporaneous rigorous empirical inquiry into the nature and implications of backwardness in the local bodies concerned through an independent dedicated Commission established for that purpose. Hon'ble Supreme Court also stated that the State Legislations cannot simply provide

uniform and rigid quantum of reservation of seats for Other Backward Classes in the local bodies across the State, that too, without a proper inquiry into the nature and implications of the backwardness by an independent Commission about the imperativeness of such reservation.

**8.27** In **Vikas Kishanrao Gawali (supra)**, the Hon'ble Supreme Court has also outlined that such inquiry into the nature and implications of backwardness cannot be a static arrangement; rather it must be reviewed from time to time so as not to violate the principle of over-breadth of such reservation. **Vikas Kishanrao Gawali (supra)** further mandates that such reservation must be confined only to the extent it is proportionate and within the quantitative limitation as is predicated by the Constitution Bench [**K. Krishna Murthy (supra)**].

**8.28** In **Vikas Kishanrao Gawali (supra)**, the Hon'ble Supreme Court elaborated that the Constitution Bench in the case of **K. Krishna Murthy (supra)** had further observed that provisions in most of the State Legislations may require a re-look. Further observation made in the case of **Vikas Kishanrao Gawali (supra)** is that the Constitution Bench had expressed a hope that the States concerned ought to take a fresh look at policy making with regard to reservations in local self-government while ensuring that such a policy adheres to the upper ceiling of 50%, including by modifying the Legislation for reducing the quantum of existing quotas in favour of backward class of citizens and make it realistic and measurable on objective parameters.

**8.29** Hon'ble Supreme Court noted in **Vikas Kishanrao Gawali (supra)** that despite a declaration of law made by the Constitution Bench of Hon'ble Supreme Court, and despite direction issued to all the States on the subject matter, State of Maharashtra did not take a re-look at the existing provisions which fell afoul of the law declared by the Constitution Bench. The Court, thus, found that no contemporaneous rigorous empirical inquiry into the nature and implications of backwardness for the purpose of providing reservation to backward class of the citizens in the matter of elections to local bodies has been conducted in the State of Maharashtra.

**8.30** Hon'ble Supreme Court quashing the Notification issued by the State of Maharashtra set aside the same to the extent it provided reservation of seats in local bodies for backward class of citizens. Hon'ble Supreme Court further declared that the result of candidates against the reserved backward class seats to be non est in law and further directed the State Election Commission to take immediate steps to announce the elections in respect of such seats to be filled from amongst general/open category of citizens. Paragraphs 9 to 13 of the judgment in the case of **Vikas Kishanrao Gawali (supra)** are extracted herein below :

*"9. Besides this inviolable quantitative limitation, the State Authorities are obliged to fulfil other preconditions before reserving seats for OBCs in the local bodies. The foremost requirement is to collate adequate materials or documents that could help in identification of Backward Classes for the purpose of reservation by conducting a contemporaneous rigorous empirical inquiry into the nature and implications of backwardness in the local bodies concerned through an independent dedicated*



*Commission established for that purpose. Thus, the State legislations cannot simply provide uniform and rigid quantum of reservation of seats for OBCs in the local bodies across the State that too without a proper enquiry into the nature and implications of backwardness by an independent Commission about the imperativeness of such reservation. Further, it cannot be a static arrangement. It must be reviewed from time to time so as not to violate the principle of overbreadth of such reservation (which in itself is a relative concept and is dynamic). Besides, it must be confined only to the extent it is proportionate and within the quantitative limitation as is predicated by the Constitution Bench of this Court.*

*10. Notably, the Constitution Bench adverted to the fact that provisions of most of the State legislations may require a relook, but left the question regarding validity thereof open with liberty to raise specific challenges thereto by pointing out flaws in the identification of the Backward Classes in reference to the empirical data. Further, the Constitution Bench expressed a sanguine hope that the States concerned ought to take a fresh look at policy making with regard to reservations in local self-government in light of the said decision, whilst ensuring that such a policy adheres to the upper ceiling including by modifying their legislations—so as to reduce the quantum of the existing quotas in favour of OBCs and make it realistic and measurable on objective parameters.*

*11. Despite this declaration of law and observations-cum-directions issued to all the States on the subject-matter, the Legislature of the State of Maharashtra did not take a relook at the existing provisions which fell afoul of the law declared by the Constitution Bench of this Court. As a matter of fact, couple of writ petitions [ WP (C) No. 6676 of 2016 and WP (C) No. 5333 of 2018] came to be filed in the Bombay High Court in which solemn assurance was given on behalf of the State of Maharashtra that necessary corrective measures in light of the decision of this Court, will be taken in right earnest. The situation, however, remained unchanged.*

*12.As a matter of fact, no material is forthcoming as to on what basis the quantum of reservation for OBCs was fixed at 27 per cent, when it was inserted by way of amendment in 1994. Indeed, when the amendment was effected in 1994, there was no guideline in existence regarding the modality of fixing the limits of reserved seats for OBCs as noted in the decision of the Constitution Bench in K. Krishna Murthy [K. Krishna Murthy v. Union of India, (2010) 7 SCC 202 : (2010) 2 SCC (L&S) 385] . After that decision, however, it was imperative for the State to set up a dedicated Commission to conduct contemporaneous rigorous empirical inquiry into the nature and implications of backwardness and on the basis of recommendations of that Commission take follow-up steps including to amend the existing statutory dispensation, such as to amend Section 12(2)(c) of the 1961 Act. There is nothing on record that such a dedicated Commission had been set up until now. On the other hand, the stand taken by the State Government on affidavit, before this Court, would reveal that requisite information for undertaking such empirical inquiry has not been made available to it by the Union of India. In light of that stand of the State Government, it is unfathomable as to how the respondents can justify the notifications issued by the State Election Commission to reserve seats for OBCs in the local bodies concerned in respect of which elections have been held in the year December 2019/January 2020, which notifications have been challenged by way of present writ petitions. This Court had allowed the elections to proceed subject to the outcome of the present writ petitions.*

*13.Be that as it may, it is indisputable that the triple test/conditions required to be complied with by the State before reserving seats in the local bodies for OBCs has not been done so far. To wit, (1) to set up a dedicated Commission to conduct contemporaneous rigorous empirical inquiry into the nature and implications of the backwardness qua local bodies, within the State; (2) to specify the proportion of reservation required to be provisioned local body-wise in light of recommendations of the Commission, so as not to fall foul of overbreadth;*

*and (3) in any case such reservation shall not exceed aggregate of 50 per cent of the total seats reserved in favour of SCs/STs/OBCs taken together. In a given local body, the space for providing such reservation in favour of OBCs may be available at the time of issuing election programme (notifications). However, that could be notified only upon fulfilling the aforementioned preconditions. Admittedly, the first step of establishing dedicated Commission to undertake rigorous empirical inquiry itself remains a mirage. To put it differently, it will not be open to the respondents to justify the reservation for OBCs without fulfilling the triple test, referred to above".*

**8.31** In **Suresh Mahajan (supra)** which emanated from State of Madhya Pradesh, Hon'ble Supreme Court reiterated its observations made in the case of **Vikas Kishanrao Gawali (supra)** and directed the State Election Commission to issue election programme by directing that the seats, except those reserved for Scheduled Castes and Scheduled Tribes, must be notified for general category. The said direction was issued by Hon'ble Supreme Court in this case for the reason that the Court found that triple test formalities were not completed in all respects by the State of Madhya Pradesh. Hon'ble Supreme Court found that the exercise of collation of empirical data and further analysis thereof by the dedicated Commission was expected to be made and thereafter Commission was to make recommendation regarding number of seats to be reserved for backward class of citizens "local body wise" and such an exercise had not been undertaken by the Commission. Thus, the Hon'ble Supreme Court observed that the State can act upon only after such an exercise is undertaken by the Commission as per its recommendation, to ensure that there is not over-breadth of such reservation in the "concerned local body". Paragraphs 8, 12, 13 and

24 of the report in the case of **Suresh Mahajan (supra)** are relevant to be referred to, which are quoted herein under :

*"8.This constitutional mandate is inviolable. Neither the State Election Commission nor the State Government or for that matter the State Legislature, including this Court in exercise of powers under Article 142 of the Constitution of India can countenance dispensation to the contrary*

*12.Therefore, we direct the State Election Commission by way of interim order, to issue election programme without any further delay on the basis of the wards as per the delimitation done in the concerned local bodies when the elections had become due consequent to expiry of 5 (five) years term of the outgoing elected body or before coming into force of the impugned Amendment Act(s) whichever is later. On that notional basis, the State Election Commission ought to proceed without any exception in respect of concerned local bodies where elections are due or likely to be due in the near future without waiting even for the compliance of triple test by the State Government for providing reservation to Other Backward Classes. We have no manner of doubt that only such direction would meet the ends of justice and larger public interests consistent with the constitutional mandate that the local self-government must be governed by the duly elected representatives uninterrupted except in case of its dissolution before expiry of the term on permissible grounds.*

*13.For, until the triple test formality is completed "in all respects" by the State Government, no reservation for Other Backward Classes can be provisioned; and if that exercise cannot be completed before the issue of election programme by the State Election Commission, the seats (except reserved for the Scheduled Castes and Scheduled Tribes which is a constitutional requirement), the rest of the seats must be notified as for the General Category.*

*24.In other words, the exercise of collation of empirical data and after analysis thereof, the Commission is*

*expected to make recommendation regarding the number of seats to be reserved for Other Backward Classes “local body wise”. Apparently, that exercise has not been undertaken by the Commission. The State Government can act upon only thereafter and as per the recommendations of the Commission - which is an independent body created to ensure that there is no over-breadth of such reservation in the “concerned local body”.*

8.32 Hon'ble Patna High Court in the case of **Sunil Kumar vs. State of Bihar and others, Civil Writ Jurisdiction Case No. 13513 of 2022, decided on 04.10.2022** did not approve of the action of the Government of Bihar and also the Election Commission of Bihar in reserving the seats for backward class of citizens for elections to Municipal Bodies in absence of compliance of the dictum laid by Hon'ble Supreme Court in some cases including the cases of **K. Krishna Murthy (supra)** and **Vikas Kishanrao Gawali (supra)**. Hon'ble Patna High Court thus directed the State Election Commission of Bihar to carry out the elections only by re-notified the seats reserved for backward class of citizens treating them as general category seats. Hon'ble Patna High Court further observed that the State of Bihar may consider enacting a comprehensive Legislation pertaining to reservations in elections to local bodies, urban or rural, to bring the State seamlessly in line with the directions issued by Hon'ble Supreme Court in the case of **K. Krishna Murthy (supra)**, **Vikas Kishanrao Gawali (supra)** and **Suresh Mahajan (supra)** amongst other judgments. The discussion made by Hon'ble Patna High Court in the case of **Sunil Kumar (supra)** is primarily based on the judgments of Hon'ble Supreme Court in the cases of **K.Krishna**

**Murthy (supra), Vikas Kishanrao Gawali (supra) and Suresh Mahajan (supra).**

**8.33** In the light of the discussions made above, if we examine the stand of the State as canvassed by the learned State Counsel, what we find is that out of triple test exercise as contemplated by Hon'ble Supreme Court in the case of **K. Krishna Murthy (supra)**, and **Vikas Kishanrao Gawali (supra)**, the State of U.P. appears to have observed only one condition i.e. the condition regarding observance of ceiling of 50% of reservation provided to Scheduled Castes/Scheduled Tribes/Backward Class of citizens together. Regarding rest of two conditions, namely, (1) constitution of a dedicated Commission to conduct an empirical inquiry into the nature and implications of backwardness in relation to local bodies and (2) providing the proportion of the reservation required in the light of recommendation of such Commission, requirement of triple test/conditions are not fulfilled in this case. In fact, the first step to fulfill the triple test/conditions is to constitute a dedicated Commission to conduct contemporaneous rigorous empirical inquiry into the nature and implications of backwardness in the local bodies and once such Commission is constituted and conducts requisite inquiry, based on recommendation of the Commission proportion of reservation required to be given to the backward class of citizens can be specified to the extent it is proportionate so that such reservation does not fall afoul of over-breadth.

**8.34** The kind of inquiry into the nature and implications of backwardness vis-a-vis local bodies as is mandated by Hon'ble Supreme Court in **K.Krishna Murthy (supra)** and **Vikas**

**Kishanrao Gawali (supra)** cannot, in our opinion, be equated with the kind of inquiry, which is confined to counting of heads alone, as is contemplated in the Government Order dated 07.04.2017.

**8.35** Thus, for the aforesaid reasons, we are of the opinion that the requirement of triple test/conditions as mandated by Hon'ble Supreme Court in the case of **K. Krishna Murthy(supra)** and **Vikas Kishanrao Gawali (supra)** does not stand fulfilled and accordingly, as a consequence whereof any exercise conducted by the State for reserving the seats and offices of Chairpersons of Municipal Bodies in the State of U.P. including issuance of the impugned Notification dated 05.12.2022 is vitiated, not sustainable and hence is liable to be struck down.

**8.36** The other issue before us, as culled out in the earlier part of the judgment, is as to whether in absence of any challenge to relevant statutory prescriptions in the State enactments which provide for reservation to Backward Class of citizens in terms of Article 243-T(c), the petitioners are entitled to the reliefs which have been prayed for.

**8.37** It has been argued on behalf of the State that in absence of challenge to sections 2(1) and 9-A of the Municipalities Act and also to section 2(51-A) and section 7 of Municipal Corporations Act which provide for quantum of reservation to Backward Class of citizens and also that such reservation will be available to castes included in Scheduled -1 appended to U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Back-ward Classes) Act, 1994 the petitioners are not entitled to any relief.

**8.38** In this regard, we may observe that the provisions akin to these provisions are available in Uttar Pradesh Panchayat Raj Act and Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 which contain similar provisions for providing reservation to Backward Class of citizens in the context of elections or rural local bodies. These provisions were under challenge before the Constitution Bench of Hon'ble Supreme Court in the case of **K. Krishna Murthy (supra)** however, Hon'ble Supreme Court did not examine such challenge in absence of adequate material that could help Hon'ble the Supreme Court to arrive at a decision about such challenge. Hon'ble Supreme Court in paragraph 60 of the report in the case of **K. Krishna Murthy** has observed that identification of Backward Classes for the purposes of reservation is an executive function and for the said purpose dedicated Commission needs to be constituted to conduct a rigorous empirical enquiry into the nature and implications of backwardness.

**8.39** In absence of any such dedicated Commission having been appointed, such data which may establish over-breadth of reservation, cannot be determined. The situation as on today remains the same.

**8.40** We may also notice that Hon'ble Supreme Court in the case of **K. Krishna Murthy (supra)** has observed that State authorities are obliged to fulfill the preconditions before reserving the seats for Backward Class of citizens in the local bodies and has, accordingly outlined the requirement to collect and collate adequate materials or documents that could help in identification of Backward Classes for the purposes of reservation by conducting a contemporaneous



rigorous empirical inquiry into the nature and implications of Backwardness through an independent dedicated Commission established for that purpose. Hon'ble Supreme Court further noticed in **Vikas Kishanrao Gawali (supra)** that Constitutional Bench had expressed a sanguine hope that States ought to take a fresh look the policy making with regard to reservation in local self-government unit while ensuring that such a policy adheres to the upper ceiling, including by modifying their Legislations so as to reduce the quantum of existing quota in favour of Other Backward Class of citizens and make it realistic and measurable on objective parameters.

**8.41** Hon'ble Supreme Court has also observed in **Vikas Kishanrao Gawali (supra)** that after the Constitution Bench decision it was imperative for the States to have set up the dedicated Commission to conduct contemporaneous rigorous empirical inquiry into the nature and implications of backwardness and on the basis of recommendations of that Commission, to take follow up steps including amending the existing statutory dispensation.

**8.42** Accordingly, State of Uttar Pradesh was also obligated by the mandate of Hon'ble Supreme Court to have a re-look at its policy regarding reservations to be made available to Backward Class of citizens in the context of elections to urban local bodies, including amendment in the existing statutory provisions.

**8.43** It is not a case where the State has set up the dedicated Commission for conducting the empirical study into the nature and implications of backwardness for the purposes of providing

reservation to Backward Class of citizens in the local self-government institutions and thereafter made necessary changes in the statutory prescriptions. Thus, the State has completely failed to comply with the dictum and directions of Hon'ble Supreme Court in the judgments contained in **K. Krishna Murthy (supra) and Vikas Kishanrao Gawali (supra)**.

**8.44** State of Uttar Pradesh cannot, thus, be permitted to flout the dictum of Hon'ble Supreme Court and take a plea that State enactments have not been challenged to deny the reliefs claimed in these petitions for the reason that Hon'ble Supreme Court in **Vikas Kishanrao Gawali (supra)** reiterated that States ought to take a re-look at its policies including the Legislative policies with regard to reservation in local self-government bodies.

**8.45** Needless to say that Article 141 of the Constitution of India binds all to the declarations made by Hon'ble Supreme Court. Further, Article 144 of the Constitution of India unambiguously directs that all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

**8.46** Accordingly, State of Uttar Pradesh was under an obligation to re-frame its policy including by way of having a fresh look at its Legislative prescriptions in tune with the law declared by the Constitution Bench of Hon'ble Supreme Court in the case of **K. Krishna Murthi (supra)** and also in the case of **Vikas Kishanrao Gawai (supra)**. The State has, however, failed to re-frame its policies according to the mandate of Hon'ble Supreme Court even after a lapse of a period of 12 years hence the plea that the petitioners are not entitled to the relief as claimed in these writ

petitions as there is no challenge to the State enactments, is not tenable.

**8.47** State in this case is, thus, on the wrong side of law declared by Hon'ble Supreme Court and hence the Court cannot permit the State to reap the fruits of its own wrong. A person having done a wrong cannot take advantage of its own wrong and plead bar of any law to frustrate any lawful act. In the facts and circumstances of the present case the legal maxim *nullus commodum capere potest de injuria sua propria* applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation, nor can a person claim any right arising out of his own wrongdoing (*jus ex injuria non oritur*) [**vide Devendra Kumar vs. State of Uttaranchal and others, 2013 9 SCC 363**].

**8.48** Reference may also be had in this regard to the judgment in the case of **Kusheshwar Prasad Singh vs. State of Bihar and others, reported in (2007) 11 SCC 447** wherein para 16 Hon'ble Supreme Court has observed as under:

*“16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong".”*

**8.49** We may also quote a legal maxim from Legal Glossary published by the Ministry of Law, Justice and Company Affairs, Government of India, which is as under:

*“Commodum ex injuria sua memo habere debet: a person cannot be allowed to take advantage of his own wrongs. Convenience cannot accrue to a party from his own wrongs, in other words no one can be allowed to benefit from his own wrongful act [Mrutunjay Pani v. Narmada Bala Sasmal and another, A.I.R. 1961 S.C.1353].”*

**8.50** For the reasons aforesaid, we are of the considered opinion that absence of challenge to the statutory prescriptions in the State enactments, which provide for reservation to Backward Class of citizens in the context of elections of local urban bodies, does not dis-entitle the petitioners to seek reliefs prayed in these petitions.

**8.51** As regards the validity of the Government Order dated 12.12.2022, State has utterly failed to satisfy the Court that it is referable to any provision either in the Municipalities Act or in the Municipal Corporations Act. The reason given in the said Government Order dated 12.12.2022 is based on the judgment in the case of **Sandeep @ Sandeep Mehrotra and others vs. State of U.P. and others** delivered on 05.12.2011 (Writ Petition No.11226 of 2011). However, when we peruse the said judgment what we find is that in the said case the then existing section 10(A) of Municipalities Act, which provided that where the election is not held for any unavoidable circumstance, then all powers, functions and duties of such Municipality shall be exercised by the District Magistrate or by a Gazetted Officer not below the rank of Deputy Commissioner, was challenged. The Division Bench of this Court in the said case struck down the said provision and declared the same as *ultra vires* unconstitutional and further declared the said provision as illegal, inoperative and void. The Court, however,

permitted the said arrangement to continue till newly elected representatives resumed the work and provided that the affairs of the Municipalities and Municipal Corporations shall be managed by the Executive Officers and Municipal Commissioners of the respective Municipal Bodies. Accordingly, the interim arrangement made by the Division Bench vide its judgment dated 05.12.2011 in the case of **Sandeep @ Sandeep Mehrotra (supra)**, lost its efficacy on constitution of the municipalities pursuant to the said judgment dated 05.12.2011 and hence the same could not have been taken aid of by the State to issue the Government Order dated 12.12.2022.

**8.52** Regarding the issue relating to prayer made in one of these writ petitions for inclusion of transgenders in the Backward Class of citizens in the light of the judgment of Hon'ble Supreme Court in the case of **National Legal Services Authority (supra)**, we may observe that the same may be in the wisdom of the State once the dedicated Commission conducts contemporaneous rigorous empirical inquiry into the nature and implications of backwardness in the local bodies.

### **Order**

For the discussion made and reasons given above, all the writ petitions are **allowed** in terms of the following directions:

(A) Notification dated 05.12.2022, issued by the Government of Uttar Pradesh, in the Department of Urban Development, under section 9-A (5)(3) is hereby quashed.

(B) The Government Order dated 12.12.2022, issued by the State Government which provides for operation of bank accounts of Municipalities under joint signatures of Executive Officers and the Senior Most Officer in Uttar Pradesh Palika Centralized Service (Accounts Cadre) is also hereby quashed.

(C) It is further directed that until the triple test/conditions as mandated by Hon'ble Supreme Court in **K. Krishna Murthy (supra)** and **Vikas Kishanrao Gawali (supra)** is completed in all respects by the State Government, no reservation for Backward Class of citizens shall be provided and since the term of Municipalities has either ended or shall be coming to an end by 31.01.2023 and the process of completion of triple test/conditions being arduous, is likely to take considerable time, it is directed that the State Government/State Election Commission shall notify the elections immediately. While notifying the elections the seats and offices of Chairpersons, except those to be reserved for Scheduled Castes and Scheduled Tribes, shall be notified as for general/open category.

The notification to be issued for elections shall include the reservation for women in terms of the constitutional provisions.

(D) In case, term of Municipal Body comes to an end, till the formation of the elected Body the affairs of such Municipal Body shall be conducted by a three-member Committee headed by the District Magistrate concerned, of which the Executive Officer/Chief Executive Officer/Municipal Commissioner shall be a member. The third member shall be a District Level Officer to be nominated by the District Magistrate.

However, the said Committee shall discharge only day-to-day functions of the Municipal Body concerned and shall not take any major policy decision.

We have issued the direction to immediately notify the elections being guided by the provisions of Article 243-U of the Constitution of India which mandates that election to constitute a Municipality shall be completed before expiry of its duration. We understand that collection and collation of materials by the dedicated Commission is a humongous and time taking task, however, formation of elected Municipal Bodies by election cannot be delayed for the reason of constitutional mandate contained in Article 243-U of the Constitution of India. Thus to fortify the democratic character of governance of society, it is essential that the elections are held at the earliest which cannot wait.

We also direct that once the dedicated Commission is constituted for undertaking the exercise of conducting empirical study as to the nature and implications of Backwardness for the purposes of providing reservation to Backward Class of citizens in the context of elections to the urban local bodies, the claim of transgenders for their inclusion amongst Backward Class of citizens shall also be considered.

(E) There will be no order as to costs.

**Order Date :-27th December, 2022**

akhilesh/sanjay

**[Saurabh Lavania, J.] [D. K. Uphadhyaya, J.]**